(22,205.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 584.

MARCELINA ROSALY, WIDOW OF RABAINNE,
APPELLANT,

vs.

ROBERTO GRAHAM Y FRAZER.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

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1 *Transcript of Record.*

In the Supreme Court of Porto Rico.

No. 857.

MARCELINA ROSALY, Vda. de Rabainne, Plaintiff and Appellant,

v.

ROBERTO GRAHAM FRAZER, Defendant and Appellee.

Claim of a Co-ownership in Real Property and Other Petitions.

Amended Complaint.

In the District Court for the Judicial District of Ponce, P. R.

MARCELINA ROSALY, Vda. de Rabainne,

v.

ROBERTO GRAHAM Y FRAZER.

Claim of a Co-ownership in Real Property; Nullity of a Proceeding to Obtain a Title of Possession and of the Conversion Thereof into a Title of Ownership; Nullity of an Alienation of Property Held in Common, and Claim for Damages.

Now comes the plaintiff and alleges:

1. That she is, and has always been, the owner, in full ownership, of an undivided interest, equivalent to the sum of $6253.67, *pesos*, in the total value of $27443.67 *pesos*, which value was given to the following urban property, in the proceedings for partition of the estate left at the death of Don Mateo Rabainne and of Don Luis Rabainne y Franco, which have been filed and recorded in the office of Don Francisco Parra, a Notary Public of this city, on the 28th of January, 1870, to wit: A two story wooden house, covered with shingles, with a lot well fenced, whereon there are other buildings, some of masonry, as a house or warehouse, and a foundry, and some
2 others of wood, as a servant room, warehouse, a house for tools, and other dependencies and utensils belonging to said buildings, which are all placed on said lot, and which are designed to serve as a black-smith shop, all of which is situated in the first ward of this city, fronting on Marina street, by which it is bounded on the East; on the West, by Concordia St.; on the South by another street leading to the Marina high-road; and on the North, by property belonging to Don Alejandro Bono and Belén Aponte.

2. That on the 15th of August, 1880, the firm Graham & Co., of which the defendant herein was the manager, entered into a contract of lease of said property, with the plaintiff and other co-owners thereof, for the term of four years, from which date, and by reason of said lease, the defendant herein took possession, and has been in

possession, of said property, in so far as the said co-ownership of the plaintiff is concerned, formerly in behalf of the firm Graham & Co., and later on, and at the present time, in his own behalf.

3. That the interest of the plaintiff, referred to in the first fact, is worth at the present time, the sum of $20,000.00.

4. That the defendant, after having acquired some of the undivided interests in said property, except the interest belonging to the plaintiff herein, applied to the extinguished Court of First Instance of this city, on the 26th of April, 1894, stating that he was the owner of the whole of said property, so as to show, in a fraudulent and illegal manner and with the firm intention of depriving the plaintiff of her rights therein, the possession which he pre-
3 tended to have of said property, and the aforesaid Court approved the said proceedings for a possessory title, on the 21st of May, 1894, which was registered in the Registry of Property for this District, on folio 150 of book No. 78 of this Municipality, property No. 3403, first registration, under the following description:— "Urban property; a masonry warehouse of a single story and flat roof, designed to serve as a black-smith shop, fronting on Marina street of this city, marked with No. 21 of the government, with the following measures: on the front, which is on the East, 32 meters and 200 millimeters; on the South, fronting on Jobo St., 21 meters and 40 millimeters; on the North, 25 meters and 30 millimeters, and its lot, with the following measures: on the East, fronting on the said Marina St., 32 meters and 200 millimeters; on the West, the rear thereof, bounded by Concordia St., 30 meters and 920 millimeters; on the South or left side, 74 meters and 780 millimeters, bounded by Jobo St.; and on the North or right side, as one enters the premises, it forms a broken line, whose measure is as follows: beginning on the East towards the West, it measures 26 meters and 56 millimeters: then towards the North, 15 meters and 32 millimeters: then again from the East towards the West in an extension of 26 meters and 99 millimeters: then it turns to the South, 8 meters and 91 millimeters: and thence towards the West, 12 meters and 53 millimeters; being bounded by a lot of Don Roberto Graham and Don José Trujillo, the latter holding in behalf of his children Doña Isabel and Don Juan Trujillo y Torruella; bounded also by
4 another lot of Don Roberto Graham and by an urban property of Doña Carmen Molina de Torres. The superficial area of said lot measures 2740 meters and 400 millimeters, and the same is surrounded by a wall; the entry of registration of possession made with regard to said lot was converted into an entry or registration of ownership in May, 1902, which latter registration is a bar which prevents the registration of the undivided interest, hereinabove referred to, belonging to the plaintiff. This property and that which was described in the first fact of the complaint, are only one, and the same, property, but it should be noted that the masonry warehouse referred to in the said fact, was built with the plaintiff's own means, and before the defendant had acquired the undivided interests above mentioned.

5. That when the defendant instituted the said proceedings to

obtain a title of possession, he had, and he knew that he had written titles of ownership (proper for registration) of the interests which he had acquired, as stated in the foregoing fact, it being very easy for him to obtain such titles as they were within his reach.

6. That the defendant, as far as the rights of the plaintiff are concerned, has never possessed the whole of said real property, with good faith and by a just title.

7. That the proceeds of the said plaintiff's interest from the 15th of August, 1880, to the 15th of August, 1908, aggregate
5 $15000 *dollars*, which proceeds the plaintiff has not received up to the present time.

Therefore the plaintiff prays the Honorable Court to render judgment in favor of the plaintiff and against the defendant, holding:

1. That the plaintiff is the owner of an undivided interest equivalent to the sum of $6253.67 *pesos*, in the total value of $27443.67 *pesos*, which was the value of said property, or of an interest equivalent thereto in the value of said property at the present time.

2. That the proceedings to obtain a title of possession of said property, instituted by the defendant, as stated in the third fact of this complaint, are null and void and without any value or effect whatsoever, as well as the Registration thereof in the Registry of Property and its conversion into a registration of ownership, directing that the proper cancellation of said registration, and of the note of conversion recorded on the margin thereof, shall be made accordingly.

3. To direct further that said property be sold at auction, with admission of bidders, inasmuch as the same is by its own nature indivisible.

4. That the defendant is bound to pay to the plaintiff the sum of $15000 *dollars* as proceeds of said property, as stated in the seventh fact of this complaint, with interest at the legal rate.

5. That the defendant be further directed to pay to the plaintiff the sum of $10000 *dollars* as additional damages, and to pay also all the costs of this suit.

Ponce, December 19th, 1908.

6 H. P. LEAKE,
H. S. BELAVAL,
JOSÉ A. POVENTUD,
Attorneys for Plaintiff.

Service is hereby acknowledged on this 19th day of December, 1908.

F. PARRA,
J. TOUS SOTO,
Attorneys for Defendant.

Filed on December 19th, 1908. F. Barnes, Sec'y, by F. W. Preston, Dep'ty Sec'y.

7 *Answer to the Amended Complaint.*

In the District Court of the Judicial District of Ponce, Puerto Rico.

MARCELINA ROSALY
v.
ROBERTO GRAHAM.

Claim of Co-Ownership.

Now comes before the Honorable Court Roberto Graham, the defendant in the above entitled case, by Francisco Parra Capó and José Tous Soto, his counsel, and in answer to the amended complaint, alleges:

1. Defendant denies the correlative fact of the complaint.

2. Defendant denies the correlative fact of the complaint; and in its stead, the defendant states that the lease referred to in the complaint was made by the Successors to "M. Rabainne é Hijos," an industrial partnership of this city, composed of Doña Marcelina Rosaly, in her own right and as curator *ad bona* of her daughter Doña Luisa Rabainne, Doña Hortensia Rabainne, and Don Jacobo Lopez, in behalf of his children, at the date stated in said complaint.

3. The defendant denies that the plaintiff has any interest whatever in the real property which is the object of this suit.

4. Defendant denies the correlative fact of the complaint.

5. The defendant denies the fifth fact of the complaint.

8 6. The defendant denies the sixth fact of the complaint.

7. The defendant denies equally the seventh fact of the complaint.

By virtue of the foregoing, the defendant prays the Honorable Court to dismiss the amended complaint with the costs against the plaintiff.

Ponce, P. R. January 5th, 1909.

FRANCO. PARRA,
JOSÈ TOUS SOTO,
Attorneys for Defendant.

Filed on January 8th, 1909. S. Vivaldi, Sec'y, by F. W. Preston.

9 *Decision and Opinion.*

In the District Court of Ponce, P. R.

MARCELINA ROSALY
v.
ROBERTO GRAHAM.

PONCE, P. R., *April 26th*, 1909.

The question involved in this suit is to determine the rights of Doña Marcelina Rosaly in a property which she, as a member of a

mercantile partnership, gave in lease to the defendant in the year 1880. The other members of said partnership were relatives of the plaintiff herein. It seems that in the year 1886 and following years, the defendant bought the respective interests of the several partners, and it seems, also, that he did not buy the interest belonging to Doña Marcelina, for the reason that she had lost her rights to an interest in the property belonging to said mercantile partnership. More properly speaking, the defendant acquired all the interests belonging to all such persons as he believed to have an interest in the property referred to. Twenty three years have elapsed since the year 1886. The plaintiff lacks absolutely any means to show what was her interest in the properties of the partnership, and whether or not she had any interest whatever in the year 1886.

There is absolute lack of evidence on the part of the plaintiff.

10 This Court does not look at old claims with favor, specially when the plaintiff's delay in bringing the action is not explained. Counsel for both parties have entered into a lengthy argument upon the construction of the Mortgage Law and other points. But the Court does not make any decision with regard to such questions at the present time. The most important matter is the absolute want of evidence on which to base a judgment in favor of the plaintiff. Therefore the action is dismissed with costs against the plaintiff.

MARTIN E. GILL.
District Judge.

11 *Judgment.*

In the District Court for the Judicial District of Ponce, P. R.

Case No. 857.

MARCELINA ROSALY, Vda. de Rabainne,
vs.
ROBERTO GRAHAM Y FRAZER.

Claim of a Co-ownership in Real Property; Nullity of a Proceeding to Obtain a Title of Possession and of its Conversion into a Title of Ownership; Nullity of an Alienation of Property Held in Common, and Claim for Damages.

At the city of Ponce, P. R. this 26th day of April, 1909; this case having been finally submitted on the 20th of March, 1909, the hearing having been set for the 19th, both parties appeared as well as their respective counsel, Messrs. J. A. Poventud, H. S. Belaval and H. P. Leake, for the plaintiff, and Messrs. Francisco Parra Capó and José Tous Soto, for the defendant; after hearing and considering the amended complaint and the answer filed thereto, the evidence introduced, the testimony of witnesses and the oral and written arguments of counsel for both sides, the opinion of the Court is that there is absolute lack of evidence whereon to base a judgment in favor of the plaintiff, and, consequently, the court should dismiss, and does

dismiss, the amended complaint filed in this case, with costs against the plaintiff.

Judgment rendered at the city of Ponce, P. R., on the 26th day of April, 1909, and entered on the same day, month and year.

MARTIN E. GILL,
District Judge.

Attest:
S. VIVALDI PACHECO,
Sec'y Dist. Court.

12 *Notice of Appeal.*

In the District Court for the Judicial District of Ponce, P. R.

Case No. 857.

MARCELINA ROSALY, Vda. de Rabainne,
v.
ROBERTO GRAHAM Y FRAZER.

Claim of a Co-ownership in Real Property and Other Petitions.

To the Secretary of the Court above mentioned and to Messrs. Francisco Parra and José Tous Soto, attorneys for defendant:

You are hereby notified that the plaintiff in the above entitled case, takes an appeal, to the Supreme Court of Porto Rico, from the judgment rendered and entered in said Court, on the 26th day of the month of April last 1909, whereby the amended complaint of the plaintiff was dismissed, said judgment being in favor of the defendant.

Ponce, May 6th, 1909.

H. S. BELAVAL,
JOSÉ A. POVENTUD,
H. P. LEAKE,
Attorneys for Plaintiff.

In the District Court for the Judicial District of Ponce, P. R.

MARCELINA ROSALY, Vda. de Rabainne,
v.
ROBERTO GRAHAM Y FRAZER.

Claim of a Co-ownership in Real Property and Other Petitions.

Acknowledgment of Service of the Notice of Appeal.

13 We, Francisco Parra Capó and José Tous Soto, attorneys for defendant in the above entitled case, do hereby acknowledge to have received in proper form and time a true and faithful copy of the notice of the appeal taken to the Supreme Court from

the final judgment rendered in favor of the defendant in this case, which notice of appeal was filed by the plaintiff in the Office of the Secretary of the District Court on the 6th of the present month of May, 1909.

May 21st, 1909.

FRANCISCO PARRA,
JOSÉ TOUS SOTO,
Attorneys for Defendant.

Filed May 22, 1909. J. A. Lopez Acosta, Deputy Secr'y.

14 *Statement of Facts and Bill of Exceptions.*

In the District Court for the Judicial District of Ponce, P. R.

Case No. 857.

MARCELINA ROSALY, Vda. de Rabainne,
v.
ROBERTO GRAHAM Y FRAZER.

Claim of a Co-ownership in Real Property and Other Petitions.

Be it remembered that on the 19th and 20th days of March of the present year, 1909, and in the above entitled case, the following proceedings were had, and at the trial of the case held on said days, the following evidence was introduced:—The following documentary evidence for the plaintiff was presented and admitted:

Partition of Properties Made in the Year 1870.

1. A copy, issued with all legal formalities, of the testamentary proceedings of Don Mateo and Don Luis Rabainne filed and recorded in the protocol which was in charge of Don Francisco Parra, under date of January 28th, *1870,* marked Exhibit No. 1 of the plaintiff, whereby is shown the following: that the Succession of Don Mateo Rabainne was composed of his widow, Doña Bernardina Franco, and their children named, *Hortensia,* unmarried and a minor in 1870, having been represented for the purpose of said partition by her mother Doña Bernardina Franco; *Josefa,* unmarried and of age in 1870; *Ramona,* who married Jacobo ó Jobo Lopez and was dead in 1870, her minor and legitimate children, Ofelia, Jacobo and Herminia Lopez y Rabainne, represented by their father,
15 Jacobo Lopez, having appeared by right of representation of their mother; and *Luis Rabainne y Franco,* who had married the plaintiff Doña Marcelina Rosaly, leaving only one daughter named Luisa, who, being a minor, appeared in proper form by right of representation of her father, the said Luis Rabainne y Franco, who died before the year 1870; that the succession of the said Luis Rabainne y Franco was composed of his widow, the plaintiff Doña

Marcelina Rosaly, and their only daughter named Luisa Rabainne y Rosaly, Doña Marcelina Rosaly having appeared in said deed of 1870 in her own right and also as tutoress and curator *ad bona* of her daughter Luisa; that Don Mateo and Don Luis Rabainne died in Ponce, the former, on the 23rd of April, 1868, and the latter, on the 8th of April, 1869, having each executed a will before a Notary Public, whereby Don Mateo Rabainne granted a betterment (*mejora*) of one third of his estate to his daughters Josefa and Hortensia Rabainne, while Don Luis Rabainne appointed by his will his daughter Luisa and his widow Doña Marcelina Rosaly, as his heirs; that the properties belonging to Don Mateo and Don Luis Rabainne were constituted by whatever interests they might have in the partnership which both father and son had been running for some years at the black-smith shop referred to in the first and fourth facts of the amended complaint, under the firm of "M. Rabainne é Hijo;" that the said partnership constituted by Mateo and Luis Rabainne was properly dissolved and liquidated by a public deed executed on the 19th of January, 1870, by the heirs and representatives
16 of both persons deceased so as to be in position to make a distribution and adjudication of the properties belonging to both estates; that among the properties which belonged to Don Mateo and Don Luis Rabainne there was the black-smith shop, *composed of the warehouse or masonry house and its lot or place annexed thereto,* valued at $9108, in the year 1870, and forming part of the said black-smith shop, there were also steam-engines, boilers, wheels and other utensils, goods and manufactures, all valued at $18335.67, and the said black-smith shop, composed as above stated, was totally valued, in the year 1870, in the sum of *$27443.67 pesos;* that of the total value of $27443.67 *pesos,* $18000 belonged to Don Mateo, and $9443.67 *pesos* belonged to Don Luis Rabainne; that the said $18000 belonging to Don Mateo Rabainne, were adjudicated or distributed as follows:

To the widow Doña Bernardina Franco.....	$6329.00
To Luisa Rabainne as inheritance of Don Mateo and as representative of her father Luis.....	1703.50
To the representatives of Ramona Rabainne, who were her three children Jacobo, Ofelia and Herminia Lopez	1703.50
To Josefa, in whose favor a betterment was granted by the will of Don Mateo.....	4132.00
To Hortensia, in whose favor a betterment was granted by the will of Don Mateo.....	4132.00
	$18000.00

that the $9443.67 *pesos* belonging to Don Luis Rabainne, deceased, were distributed as follows:

To his widow, the plaintiff Doña Marcelina Rosaly.....	6253.67
To his daughter Luisa Rabainne.....	3190.00
	$9443.67

that said adjudication was made to Doña Marcelina Rosaly
17 as part payment of the capital which she brought into the marriage when she married Don Luis Rabainne, amounting to $19030.39, and of one half of the property of the conjugal partnership belonging to her; that all parties concerned were satisfied with the transactions contained in said deed of 1870; and that said deed containing said transactions with regard to the testamentary proceedings of Mateo and Luis Rabainne was filed in the Registry of Property of Ponce, on the 29th of January, 1909, for the purpose of having the interest of $6253.67, which was adjudicated to the plaintiff in the said black-smith shop, properly registered in her favor, and, under date of February 12th, 1909, the Registrar denied the registration of said interest, and made, in lieu thereof, a cautionary notice in favor of the plaintiff, which would be in force for four months, the reason for such action being that the whole of said urban property had been registered in favor of the defendant Don Roberto Graham y Frazer.

Contract of Lease Made in the Year 1880.

2. The original private contract of lease of the property referred to, which document was marked as exhibit No. 2 of the plaintiff, and which literally copied, reads as follows: At the city of Ponce, this fifteenth day of August, in the year one thousand eight hundred and eighty. We, the undersigned, on the one side "The Succession of Rabainne é Hijo," an industrial partnership of this city, composed of the following persons: Doña Marcelina Rosaly, widow of Don Luis Rabainne, in her own right and as curator *ad bona,* properly recognized as such, of her legitimate daughter Doña Luisa
18 Rabainne, born of said marriage; Doña Hortensia Rabainne, of age, who, although married to Don Telesforo Bocanegra, is now preparing the documentary evidence necessary to institute proper proceedings to obtain authority to administer and contract with regard to her property, which is exclusively her own, her husband being insane; and Don Jobo Lopez, as legitimate father of his minor children born of his marriage with Doña Ramona Rabainne, deceased, and named: Doña Ofelia, Doña Herminia and Don Jacobo; and, on the other side, Don Roberto Graham, Mechanical Engineer, manager and representative of Graham & Company, all residents of this city, hereby agreed to the following:

First. The undersigned "Successors of Rabainne é Hijo," give in lease to Graham & Co., for the term of four years, to be counted from this date, the black-smith shop of "Rabainne é Hijo," which is situated in this city, fronting the road leading to the Marina, composed of the masonry warehouse and forge, with the engine and other dependencies annexed to the shop, and all other warehouses on the yard, including the lot whereon all the above is situated, all of which has been described in detail in an inventory made and signed in duplicate by the parties for the purpose of specifying the condition thereof, a copy of which has been delivered to each party.

Second. Besides the dependencies referred to in the said inven-

tory, which are those hereby given in lease, there are in said
19 shop other goods, irons and implements, which constitute *the balance or remainder of the liquidation made of "Rabainne é Hijo,"* of which an inventory has also been made in duplicate, a copy of which will be delivered to each party. All of such goods will be kept there for account of "the successors of Rabainne é Hijo" so that Graham & Co. may realize them as might be possible, and an account should be rendered by them every six months, making payment of whatever they might have realized, deducting therefrom ten per cent as commission hereby agreed upon.

Third. Graham & Co. bind themselves to keep in good working order and condition, save in case of main force, the engines and utensils of the shop as well as the building delivered to them, and to make, for their own and exclusive account, all repairs necessary for such purpose, and the improvements which they might see fit to make, but they will have no right to require any compensation therefor at the expiration of the contract.

Fourth. In the improvements stated above are not included smelting-furnaces, and other manufactures or buildings, of which the shop lacks today, and which might be installed by Graham & Co. so as to push it forward, as improvements of this kind shall be paid for by the Succession of Rabainne é Hijo at the expiration of the contract, or so much thereof as both parties might mutually agree, the price of said improvements to be fixed by experts in the matter;
and in case the said Succession should have no interest in
20 keeping the said improvements, Graham & Co. shall take them away from the place, at their own expense, without causing any damages to the other parts of the shop where they may be installed.

Fifth. The price of said lease which has been agreed upon, is the following: for the first nine months, at the rate of one hundred and fifty *pesos* per month; for the following nine months, at one hundred and seventy five *pesos* per month; and for the remaining two years and a half, at the rate of two hundred *pesos*, also per month, the payment to be made either, at the end of each month or weekly, or every fifteen days, as the Succession depend on this rent for their daily expenses.

Sixth. While this contract is in force the Succession of Rabainne é Hijo can not sell either in whole or in part the shop leased hereby, unless the new owner should agree to maintain the lease and abide by the terms thereof.

Seventh. This contract of lease must be made to appear in a public instrument as soon as the proceedings above referred to shall be finally decided, and any other legal formality which may be required, shall have been complied with, for which purpose the parties mutually fix a term of eight months, and bind themselves to maintain and comply with the same in the meanwhile and to submit to the decision of arbitrators and amicable compounders any questions arising between the contracting parties during the aforesaid term of the lease.

Eighth. It is agreed that hereafter, all taxes imposed upon the

shop shall be paid by the lessees Graham & Co.—Finally, we
21 respectively bind ourselves to maintain and abide by the terms of this contract of lease, and in testimony thereof, we sign this contract in duplicate so that each party may keep a copy of the same, at the city of Ponce, date *ut supra*.—Jobo Lopez.—Hortensia R. de Bocanegra.—Marcelina Rosaly—Graham & Co.;—Franco. Parra, witness;—J. S. Steinacher, witness.

Certificate of the Clerk of the Federal Court.

3. A certificate properly issued by the Clerk of the Federal Court, under the seal of the said Court, marked as exhibit No. 3, showing the verified answer of the defendant to the complaint filed against him in said Court, in the year 1900, by Bernardo and Hortensia Bocanegra, from which it appears: that a suit was brought in the Federal Court, in the year 1900, against Don Roberto Graham, by Bernardo and Hortensia Bocanegra, who claimed thereby certain interest in the same urban property which is the object of this suit; that the defendant stated, in the verified answer filed to the said complaint, that in the year 1880 he received in lease the lot, buildings, machinery and goods which are the object of this suit, from the owners of said property; that the defendant continued in the possession of said property, as such lessee thereof, up to the month of December, 1893, on which date he acquired the said real property and the personal property therein contained from several owners.

Another Certificate Issued by the Clerk of the Federal Court.

4. Another certificate properly issued by the Clerk of the Federal Court, under the seal of said Court, marked as exhibit No. 4
22 of the plaintiff, which contains the testimony given by the defendant Roberto Graham in the aforesaid suit in equity, brought against him, in the year 1900, in the Federal Court, by Bernardo and Hortensia Bocanegra, from which it appears that the defendant Graham testified in said case, the following: that he received in lease the property in question, in the year 1880, from the owners thereof; that being questioned as to whether or not, in the year 1880, when he received the said property in lease, any business was therein transacted, he answered that the partnership had been dissolved; that the testimony given by Mr. Dorrington, with regard to the value of the machinery, was correct; that when he received the said black-smith shop in lease, the same was not doing any business; that Mr. Alfred Henry Dorrington and the defendant constituted the partnership Graham & Co. in the year 1880; that he never bought the interest of Doña Marcelina Rosaly in said black-smith shop and real property, because said lady had nothing to sell and never had any interest therein.

A Certificate Issued by the Clerk of the Federal Court.

5. Another certificate properly issued by the Clerk of the United States District Court of Porto Rico, under the seal of said Court,

marked as exhibit No. 5 of the plaintiff, from which it appears and whereby it is shown that the testimony given under oath by Alfred Henry Dorrington, in the Federal Court, in the aforesaid suit brought by Bernardo and Hortensia Bocanegra against
23 Roberto Graham, was as follows: that in the year 1880 he was a copartner of the defendant Roberto Graham, under the firm of "Graham & Co."; that they received in lease the black-smith shop in question from the descendants of Rabainne; that when they received the property in the year 1880, there was machinery to the estimated value, at that time, of $2985 *pesos*, but in 1885 they had a value of $3950 *pesos;* that, in his opinion, the lease of the machinery alone was worth, at that time, reasonably, 30 *pesos* per month.

A Certificate Issued by the Registrar of Property of Ponce.

6. A certificate issued by the Registrar of Property of Ponce, marked as exhibit No. 6 of the plaintiff, which literally copied, reads as follows: The Registrar of Property of Ponce. Sir: The undersigned attorney in behalf of Doña Marcelina Rosaly, requests the Registrar to issue certified literal copy of the first registration of the property No. 3403, found on folio 150, volume 78, of this municipality, including therein the marginal note showing the conversion of the title of possession of said property into a title of ownership, and further, that said property is now recorded in favor of Don Roberto Graham y Frazer.—Ponce, March 9th, 1909.—José A. Poventud.—I Don José Sastraño Belaval, Registrar of Property for this District, do hereby certify: That in accordance with the request made in the foregoing writing, I have examined the books of this Registry, under my custody, and the following appears
24 therein: that on folio 150, of volume 78 of Ponce, the first registration of the property No. 3403 is found, which literally reads: "Urban property;—a masonry warehouse of a single story and flat roof, designed to serve as a black-smith shop, fronting on Marina street of this city, marked with No. 21 of the government; with the following measures: on the front, which is on the East, 32 meters and 200 millimeters; on the South, fronting on Jobo st., 21 meters and 40 millimeters; on the North, 25 meters and 30 millimeters, and its lot, with the following measures: on the East, fronting on the said Marina St., 32 meters and 200 millimeters; on the West, the rear thereof, bounded by Concordia st., 30 meters and 920 millimeters; On the South or left side, 74 meters and 780 millimeters, bounded by Jobo St.; and on the North or right side, as one enters the premises, it forms a broken line, whose measure is as follows: beginning on the East towards the West, it measures 26 meters and 56 millimeters; then towards the North, 15 meters and 32 millimeters: then again from the East towards the West in an extension of 26 meters and 99 millimeters: then it turns to the South, 8 meters and 91 millimeters: and thence towards the West, 12 meters and 53 millimeters; being bounded by a lot of Don Roberto Graham and Don José Trujillo, the latter holding in

behalf of his children Doña Isabel and Don Juan Trujillo y Torruella; bounded also by another lot of Don Roberto Graham and by an urban property of Doña Carmen Molina de Torres. The superficial area of said lot measures 2740 meters and 400 millimeters, and the same is surrounded by a wall." The justified
25 value thereof is twenty thousand *pesos*. This property appears to be free from encumbrances. Don Roberto Graham y Frazer, married, of age, Engineer and a resident of this city, applied to the Court of First Instance of this city and filed a petition therein, on the 26th of April, 1894, requesting that he be allowed to show the possession which he had of the property of this number, which he acquired by partial purchases thereof from the following named persons: Don Pedro Simón Battistini y Pierluisii, Don Francisco Parra, Doña Hortensia, Don Bernardo, Doña Rosa, Doña Cecilia, Don Luis and Don Telesforo Bocanegra y Rabainne, which purchases were made in the year 1893, the petitioner having no written title of the property. With said petition he filed a certificate issued on the twentieth of April last, signed and sealed by the Mayor, who was also President of the City Council, from which it appears that in the declaration or schedule for urban properties, presented by Don Roberto Graham, for the purpose of the assessment of taxes within this jurisdiction, he appears as owner of an estate described as follows:—"A masonry warehouse situated in Marina St., No. 21, bounded, on the North, by a lot belonging to Don Roberto Graham and by another belonging formerly to Doña Ofelia Lopez and now to the said Graham and by a house of Doña Carmen Molina de Torres; on the South, by Jobo St., and on the West, by Concordia St., having a superficial area of three thousand six hundred and twenty two yards, equivalent to two thousand seven hundred
26 and forty meters, with an estimated selling price of ten thousand pesos, and in rent one thousand *pesos*." The petition having been allowed, the owners of the adjoining estates were summoned to appear, and they did not oppose the same, and the proceedings having been referred to Don Pedro Simón Battistini y Pierluissi, Don Francisco Parra y Duperón, and Don Telesforo Bocanegra, the latter as legitimate father with authority over his children Don Bernardo, Doña Hortensia, Doña Rosa, Doña Cecilia, Don Luis and Don Telesforo Bocanegra y Rabainne, former owners of the property marked with this number, and they stated that they had nothing to oppose because the sale of the property referred to had been actually made; there appearing as witnesses Don Jacobo Tarrats y Laborte and Don Luis García y Faberi, both of age, property owners and residents of this city, who testified in support of the petition.

The proceedings having been referred to the Municipal Prosecuting Attorney, the latter made his report stating that, in his opinion, the legal requirements of procedure had been properly complied with, and thereupon, an order was made on the 21st of May of the same year, by Don Rafael Sanchez Montalvo, acting Judge of the Court of First Instance of this city, and attested by the Clerk Don Luis Yordan Dávila, whereby the petition was approved. There-

upon, and after having examined the Registry, wherein no entry or registration has been found which might contradict the above, I hereby register the possession of the estate marked with this number, in favor of Don Roberto Graham y Frazer, without
27 prejudice to third parties having a better right to the property thereof.

All of the foregoing appears respectively from the Registry and from the proceedings hereinabove referred to, which were instituted in the Court of First Instance of this city, and authorized by the clerk Don Luis Yordan Dávila, wherein the certificate issued by the Mayor, mentioned above, appears, which document has been filed in this Registry on the 26th inst. at 8 a. m., according to the entry No. 788, made on the second page of folio 261, of Vol. 16 of the Journal, the said proceedings having been filed under No. 55 and attached to the proper record. 150 *pesos* have been paid as duty as shown by the acquittance No. 658 issued by the Custom-house of this city, under date of the sixth of June last, which is filed under No. 568 in the proper record.—And the above and foregoing being in full accord with the aforesaid documents and with the records of this Registry, to which I hereby refer, I hereunto fix my hand, at the city of Ponce, the 30th of July, 1894.—Manuel Araujo, Acting Registrar.

That on the margin of the foregoing registration, the following entry appears:—The first registration of possession, appearing on this page, made in favor of Roberto Graham y Frazer, is hereby converted into a registration of ownership, by virtue of proceedings instituted in the Municipal Court of this city, which were approved by an order made on the twentieth of the present month of May, by the judge Don Juan Principe, attested by the Secretary Don Andrés Corazón.—So it appears from a certified copy of said
28 proceedings, issued in duplicate, on the 26th inst., by the aforesaid Secretary, and approved by the above mentioned Judge, which was filed in this office to-day at 11 a. m., as shown by the entry No. 937, on the second page of folio 228, of Volume 27 of the Journal, one copy of which has been placed on file, under No. 88, in the record of public documents. And the above and foregoing being in full accord with the records of this Registry and document referred to, I hereunto affix my hand at the city of Ponce, this 29th day of May, 1902. Purcel, Acting Registrar.—That said registration made in favor of Don Roberto Graham y Frazer is in full force and effect, although there appears on folio 225 of Vol. 138 of this Municipality, a cautionary notice taken on the 12th of February last, in favor of Doña Marcelina Rosaly y Becerra, which notice will be in force for four months, and which refers to an interest or co-ownership of $6253.67 *pesos* in the total value of $27,443.67 *pesos*, as stated in the aforesaid notice, which was made under letter A, estate No. 3403 duplicate.—The above and foregoing fully agrees with the records of this Registry. In testimony whereof, I hereunto affix my hand at the city of Ponce this 17th day of March, 1909.—José Sastraño Belaval.—Two internal revenue

stamps of $1.00, two of $0.50 and two of $0.10 have been hereunto affixed and cancelled, according to schedule No. 6.—Belaval.

Deed of Sale of the Minors Bocanegra in Favor of Roberto Graham.

7. A copy properly issued of the deed of sale executed by
29 Telesforo Bocanegra as representative of his minor children, in favor of Don Roberto Graham, at the city of Ponce, on the 22nd of December, 1893, before Rafael Leon, Notary Public, acting as substitute of the Notary José Rodriguez, marked as exhibit No. 7 of the plaintiff, from which it appears:—that on the 22nd of December, 1893, Don Telesforo Bocanegra, widower, as representative of his minor children, over whom he had authority, named: Hortensia, Bernardo, Rosa, Cecilia, Luis and Telesforo Bocanegra y Rabainne, after having been judicially authorized therefor, sold to Don Roberto Graham y Frazer, an undivided interest which was not specified in the urban property in question, that is to say, in the following property: A masonry warehouse marked with the number 21, with the machinery therein, and the lot whereon the above is placed, and which constitutes the industrial black-smith shop and carpentry, situated in Marina st., in this city, said property being bounded on the front, that is, on the East, by Marina street; on the left or South side by Jobo Street; on the right side, or North, by properties of the succession of Logroño, Succession of Doña Carmen Molina and by another of Don Pedro S. Battistini, which formerly belonged to Doña Ofelia Lopez; and at the rear or West, by Concordia street; the measures of said warehouse and lot are as follows: on the front twenty eight meters and ninety seven centimeters; on the south, the lot, sixty seven meters and seventy centimeters; on the West, thirty meters and nine centimeters; and on the North, going towards
30 the East, twelve meters and fifty three centimeters, -hence turning towards the North, eight meters and ninety one centimeters, thence towards the East, sixteen meters and ninety nine centimeters, -hence towards the South, fifteen meters and thirty two centimeters, then turning to the East, twenty six meters and forty six centimeters long by five meters and fifty seven centimeters wide, meters wide, there being a masonry building or apartment annexed thereto, on the South side thereof, of sixteen meters and seventy one centimeters long by five meters and fifty seven centimeters wide, which serves as a black-smith shop. Then follows a wooden shed, covered with galvanized iron, of thirty three meters and forty eight centimeters long, by five meters and fifty seven centimeters wide, used as a carpentry; and on the North side thereof, there is a small warehouse which measures at the front sixteen meters and ninety nine centimeters by fifteen meters and thirty two centimeters deep, used as storehouse; that on account of the death of Don Mateo Rabainne and of Doña Bernardina Franco, legitimate parents of Doña Hortensia Rabainne y Franco, who was the wife of Mr. Bocanegra and the mother of the aforesaid minors, there was made an extrajudicial partition of the property of the former, of which the property just described formed a part; that an undivided inter-

est in the property described, which interest is not specified in this deed, was adjudicated, among other things, to the said Doña Hortensia Rabainne y Franco, in payment of her inheritance; that the
31 said Doña Hortensia Rabainne y Franco died in Ponce on the 26th of February, 1886, without having made any will, for which reason there was made a declaration of heirs ab-intestate in favor of the legitimate children of the said lady, born of her marriage with Don Telesforo Bocanegra, which children are Hortensia, Bernardo, Rosa, Cecilia, Luis and Telesforo Bocanegra y Rabainne the order designating the heirs having been made by the Court of First Instance of Ponce, on the 29th of April, 1888; that the said Mr. Bocanegra sold to Mr. Graham the undivided interest belonging to his said minor children, in the property above described, as inheritance from their aforesaid mother, Doña Hortensia Rabainne y Franco and conveyed to Mr. Graham the full ownership and property of the said interest; that the price of the sale was the sum of two thousand and five hundred *pesos;* that the Notary Public who authorized the deed informed the purchaser that he ought to file a copy of said deed in the Registry of Property for the registration thereof.

Deed of Sale of Luisa Rabainne to Don Francisco Parra y Duperón.

8. A copy properly issued of the deed of sale executed by Antonio Yumet, as attorney-in-fact of Luisa Rabainne y Rosaly, in favor of Don Francisco Parra Duperón, at the city of Ponce, the 12th day of May, 1892, before Don Joaquín Mayoral, a Notary Public, marked as exhibit No. 8 of the plaintiff, from which document it appears:—that Doña Luisa Rabainne y Rosaly had an undivided interest
32 in the following urban property: A warehouse with its lot and machinery therein, which constitutes the industrial black-smith shop and carpentry, now marked with number 21, in Marina street, at the city of Ponce. It is bounded on the front as one enters the premises, that is to say, on the East, by Marina St.; on the left side, or South, by Jobo St.; on the right side, or North, by properties belonging to the Succession of Logroño, to Doña Ofelia Lopez, and to the Succesion of Doña Carmen Molina de Torres; and at the rear or West, by Concordia St. The measure of the warehouse and lot at the front is twenty eight meters, nine hundred and seventy seven millimeters; on the South, the measure of the lot is sixty seven meters, seven hundred and eight millimeters; on the West, thirty meters ninety two millimeters; on the North, in the direction towards the East, twelve meters, five hundred and thirty nine millimeters, thence towards the North, eight meters, nine hundred and fifteen millimeters, -hence in a direction to the East, sixteen meters, nine hundred and ninety six millimeters, then turning to the South fifteen meters, three hundred and twenty four millimeters, and thence towards the East again, twenty six meters, four hundred and sixty nine millimeters. The masonry warehouse is nine meters, one hundred and ninety five millimeters wide, there being a masonry building or apartment annexed thereto, on the South side thereof, of

sixteen meters, seven hundred and eighteen millimeters long,
33 by five meters, five hundred and seventy one millimeters wide, which serves as a black-smith shop. Then follows a wooden shed, covered with galvanized iron, of thirty three meters, four hundred and eighty five millimeters long, by five meters, five hundred and seventy one millimeters wide, used as a carpentry. And on the North side thereof, there is a small warehouse measuring sixteen meters, nine hundred and ninety six millimeters at the front, by fifteen meters, three hundred and twenty four millimeters deep, used as a storehouse.—That said undivided interest was adjudicated to her as heiress of her grand-parents Don Mateo Rabainne and Doña Bernardina Franco, of her father Luis Rabainne y Franco, and of her aunt Doña Josefa Rabainne y Franco; that Don Antonio Yumet, as attorney-in-fact of the said Doña Luisa Rabainne, with sufficient power for the purpose, sold the said interest to Don Francisco Parra for the sum of three thousand three hundred and twenty five *pesos;* that on the date of the said sale, that is to say, in the year 1892, the principal Doña Luisa had an interest in said property equivalent to thirty four and twenty hundredth per cent, according to a liquidation made with the intervention of all the parties concerned in the aforesaid inheritances; that the Notary who authorized the deed informed the purchaser that he ought to file a copy of said deed in the Registry of Property for the registration thereof.

A Letter Addressed by the Defendant Graham to Schulze.

34 9. And original letter signed and addressed by the defendant Roberto Graham to Don A. Schulze, marked as exhibit No. 9 of the plaintiff, which literally copied is as follows: "Ponce, October 24th, 1889.—Mr. A. Schulze, Aguadilla.—My dear sir and friend: I received your telegram last night whereby you offer to cede in my favor all the rights of your wife in the estate of Rabainne for the sum of $3500. As I have already informed you I can not go beyond $3000, but this should be understood for all her rights, because as no partition has been made in the testamentary proceedings, and no property has been registered, the same can not be specified.—Indeed, I doubt that this is a good business for me, as I am displeased with the unsatisfactory outcome of the black-smith shop, and on account of the money that I have already lost therein; I fear that the acceptance of the business offered by you will only serve to place me in a still more embarrassing position.—For this reason I would not regret if somebody else would be willing to accept it. Yours very truly, Roberto Graham."

Cession Made by Jacobo Lopez in Favor of P. S. Battistini.

10. A copy properly issued of the deed of cession of rights and actions, executed by Jacobo Lopez y Rabainne in favor of Don Pedro S. Battistini, at the city of Ponce, the 7th day of July, 1887,

before Don José Rodriguez, a Notary Public, marked as exhibit No. 10 of the plaintiff, from which document it appears: that the
35 sum of 5023.39 *pesos* belonged to Don Jacobo Lopez Rabainne as inheritance from his grand parents Don Mateo Rabainne and Doña Bernardina Franco, as well as from his aunt Doña Josefa Rabainne, as appears with greater details in the partition proceedings of the properties left at the death of his aforesaid ascendants and from the will executed by his aunt Doña Josefa Rabainne; that said hereditary properties were constituted, among other things, by a warehouse and its lot, and the machinery therein, all of which constitutes the industrial black-smith shop and carpentry now marked with number 21, in Marina street, at the city of Ponce. It is bounded on the front as one enters the premises, that is to say; on the East, by Marina St.; on the left side, or South, by Jobo St.; on the right side, or North, by properties belonging to the Succession of Logroño, to Doña Ofelia Lopez, and to the Succession of Doña Carmen Molina de Torres; and at the rear, or West, by Concordia St. The measure of the warehouse and lot at the front is twenty eight meters, nine hundred and seventy seven millimeters; on the South, the the measure of the lot is sixty seven meters, seven hundred and eight millimeters; on the West, thirty meters, ninety two millimeters; on the North, in the direction towards the East, twelve meters, five hundred and thirty nine millimeters, thence towards the North, eight meters, nine hundred and fifteen millimeters, -hence in a direction to the East, sixteen meters nine hundred and ninety six millimeters, then turning to the South fifteen
36 meters, three hundred and twenty four millimeters, and thence towards the East again, twenty six meters, four hundred and sixty nine millimeters. The masonry warehouse is eleven yards wide, which are equivalent to nine meters, one hundred and ninety five millimeters; there being a masonry building or apartment annexed thereto, on the South side thereof, of twenty yards long, equivalent to sixteen meters, seven hundred and eighteen millimeters, by five meters, five hundred and seventy one millimeters wide, which serves as a black-smith shop. Then follows a wooden shed, covered with galvanized iron, of thirty seven yards and two feet long, that is, thirty three meters, four hundred and eighty five millimeters, by five meters, five hundred and seventy one millimeters wide, used as a carpentry. And on the North side thereof, there is a small warehouse measuring sixteen meters, nine hundred and ninety six millimeters at the front by fifteen meters, three hundred and twenty four millimeters deep, used as a storehouse; that some of the properties inherited by Don Jacobo Lopez Rabainne have disappeared, others have been alienated by him, and there is only, as remainder of all such inheritances, including the portion adjudicated to him, in the buildings, lot and machinery above described, an interest represented by a thirteen and four thousand five hundred and seventy thousandth per cent (13.4570%) of the total value of the said inheritances, this amount having been estimated by mutual agreement of the parties, the interest above referred to being
37 the one which belongs to him, according to the rents or interest which for seven years have been paid to him; that the

said Jacobo Lopez Rabainne cedes, renounces and conveys in favor of Don Pedro Simón Battistini whatever rights and actions might belong to him as heir of his grandparents Don Mateo Rabainne and Doña Bernardina Franco, and of his aunt Doña Josefa Rabainne y Franco, and particularly whatever interest he may have as such heir in the manufacture, lot and machinery which constitute the blacksmith shop above described and which has been leased to Don Roberto Graham, that is, to Graham & Co.; that the price of the said alienation was the sum of one thousand one hundred and thirty *pesos;* that the grantee Mr. Battistini had the right to enter immediately into the full enjoyment and exercise of whatever rights might have belonged to the grantor Mr. Lopez; that a copy of said deed should be filed in the Registry for registration.

Cession Made by Herminia Lopez in Favor of Pedro S. Battistini.

11. A copy properly issued of the deed of cession of rights and actions, executed by Herminia Lopez y Rabainne in favor of Pedro S. Battistini, at the city of Ponce, the 18th day of July, 1887, before Don José Rodriguez, a Notary Public, marked as exhibit No. 11 of the plaintiff, from which document it appears:—That the sum of $8714.02 *pesos* belonged to Doña Herminia Lopez Rabainne as inheritance from her grandparents Don Mateo Rabainne and Doña Bernardina Franco, as well as from her aunt Doña Josefa Ra-
38 bainne, as appears more specifically in the partition proceedings of the properties left at the death of her aforesaid ascendants and from the will executed by her aunt Doña Josefa Rabainne; that said hereditary properties were constituted, among other things, by the urban property described in the exhibit or deed stated under the foregoing No. 10; that some of the properties inherited by the said Doña Herminia Lopez y Rabainne have disappeared, others have been alienated by her, and there is only, as remainder of all such inheritances, including the portion adjudicated to her in the building, lot and machinery above described and involved in this suit, an interest represented by a twenty three and six hundred and fifty three thousandths per cent (23.0653) of the total value of the said inheritances, this amount having been estimated by mutual agreement of the parties, the interest above referred to being the one which belongs to her, according to the rent or interest which for seven years *have* been paid to her; that the said lady, Herminia Lopez Rabainne, cedes, renounces and conveys in favor of Don Pedro Simón Battistini whatever rights and actions might belong to her as heiress of her grandparents Don Mateo Rabainne and Doña Bernardina Franco and of her aunt Doña Josefa Rabainne y Franco, and particularly whatever interests she may have as such heiress in the manufacture, lot and machinery which constitutes the blacksmith shop above described and which has been leased to Don Roberto Graham, that is to Graham & Co.; that the price of said alienation was the sum of two thousand *pesos;* that the
39 grantee Mr. Battistini had a right to enter immediately into the full enjoyment and exercise of whatever rights might

have belonged to the grantor Mrs. Lopez; that a copy of said deed should be filed in the Registry for registration.

Cession Made by Ofelia Lopez in Favor of Pedro S. Battistini.

12. A copy properly issued of the deed of cession of rights and actions, executed by Ofelia Lopez y Rabainne in favor of Pedro S. Battistini, at Ponce, the 9th of January, 1898, before Don José Rodriguez, a Notary Public, and marked as exhibit No. 12 of the plaintiff, from which document it appears: that the sum of 3340 *pesos* belonged to Doña Ofelia Lopez y Rabainne as inheritance from her grand parents Don Mateo Rabainne and Doña Bernardina Franco, as well as from her aunt Doña Josefa Rabainne, as appears more specifically in the partition proceedings of the properties left at the death of her aforesaid ascendants and from the will executed by her aunt Doña Josefa Rabainne; that said hereditary properties were constituted, among other things, by the urban property described in the exhibit or deed stated under the foregoing No. 10; that some of the properties inherited by Doña Ofelia Lopez y Rabainne have disappeared, others have been alienated by her, and three is only, as remainder of all such inheritances, including the portion adjudicated to her in the building, lot and machinery above described, and involved in this suit, an interest of eight and
40 nine hundred and ninety three thousandths per cent (8.993) of the total value of the said inheritances, this amount having been estimated by mutual agreement of the parties, the interest above referred to being the one which belongs to her, according to the rent or interest which for seven years *have* been paid to her; that the said Ofelia Lopez Rabainne cedes, renounces and conveys in favor of Don Pedro Simon Battistini whatever rights and actions might belong to her as heiress of her grand parents Don Mateo Rabainne and Doña Bernardina Franco, and of her aunt Doña Josefa Rabainne y Franco, and particularly whatever interest she may have as such heiress in the manufacture, lot and machinery which constitutes the black-smith shop above described and which has been leased to Don Roberto Graham, that is to Graham & Co.; that the price of the said alienation was the sum of seven hundred fifty five *pesos;* that the grantee Mr. Battistini had the right to enter immediately into the full enjoyment and exercise of whatever rights might have belonged to the grantor Mrs. Lopez; that a copy of said deed should be filed in the Registry for registration.

Will Executed by Josefa Rabainne.

13. A copy properly issued of the public deed containing the will executed by Josefa Rabainne y Franco, at the city of Ponce, the 28th day of February, 1874, before Don Francisco Parra Duperón, a Notary Public, marked as Exhibit No. 13 of the plaintiff, from which it appears:—that Doña Josefa Rabainne, the testatrix, was
41 unmarried and twenty seven years old, at that time; that the said testatrix was a legitimate daughter of Don Mateo Ra-

bainne, then deceased, and of Doña Bernardina Franco, then living; that she leaves no children of any kind; that the properties of the testatrix are now constituted by that which was adjudicated to her as inheritance of her father Don Mateo Rabainne, as shown by the deed of partition of the properties of the latter, executed before Don Francisco Parra the same notary who authorized this will, in the year one thousand eight hundred and seventy; that one third of her properties be distributed among several persons as bequests made by her in their favor; that with regard to the remaining two thirds of her properties, she institutes and appoints as her heirs, in an equal part thereof the following: her nephew Jacobo Lopez y Rabainne; her nieces Ofelia and Herminia Lopez y Rabainne, all children of Jacobo Lopez and of Ramona Rabainne; Doña Luisa Rabainne y Rosaly, daughter of Don Luis Rabainne and of Doña Marcelina Rosaly; Doña Hortensia and Don Bernardo Bocanegra y Rabainne, children of Telesforo Bocanegra and of Hortensia Rabainne.

Testimony of Witnesses Introduced as Direct Evidence of the Plaintiff.

A. The witness DON ROBERTO GRAHAM Y FRAZER, defendant, properly sworn, testified: that he was managing partner of the firm Graham Co.; that he received in lease the black-smith shop that he now occupies by virtue of a contract of lease mentioned in this bill of exceptions, under No. 2; that he acknowledges that docu-
42 ment and that he signed the same in behalf of Graham & Co.; that he received that property in lease in the year 1880; that during the first nine months of the lease, he paid the rents to the manager of the firm M. Rabainne, whose name was Jobo Lopez; that after that time, he paid the rents to every heir and co-owner, by order of the said Jobo Lopez; that according to what Jobo Lopez told him, such persons were: Luisa Rabainne y Rosaly, the payments in behalf of the latter having been made to her mother Doña Marcelina Rosaly as her guardian, Hortensia Rabainne de Bocanegra, and Don Jobo Lopez as representative of his three minor children; that he never paid a cent to Doña Marcelina Rosaly, in her own right; that he acknowledges the handwriting and the letter which he addressed to Don A. Schultze, referred to in this statement under No. 9; that the said Mr. Schultze was the husband of Luisa Rabainne y Rosaly, the plaintiff's daughter; that what he meant in that letter was that the property was undivided, that there was no specific interest, that they were trying to sell him rights, that it was not a property like a house which everybody knows what it is.

B. The witness DON RAFAEL QUIÑONES, properly sworn, testified: that he knows Don Roberto Graham; that he knows the black-smith shop, with its lot and building now occupied by Mr. Graham, in Marina st., in this city; that said urban property is bounded, at the front, by Marina St.; on the South by Jobo st.; and on the rear by Concordia st.; that Jobo street is the only street which, to
43 the South of said property, leads towards Marina street.

C. The witness DOÑA LUISA RABAINNE, duly sworn, testified: that she is the widow of Don A. Schultze; that she lives with her mother, the plaintiff herein, and with Luisa Taforos and a niece on Vives street in this city; that a gentleman by the name of Somohano came to her house and offered to her mother, the plaintiff, five thousand *pesos* if she gave him a receipt properly signed to compromise this question; that the said Somohano had been commissioned to go there by some gentleman whose name he did not say; that this occurred about four or five months ago, and that this matter was pending at that time between the plaintiff and Mr. Graham.

D. LUISA TAFORÓS, duly sworn, testified: that she lives in the house of Doña Marcelina Rosaly with Luisa Rabainne and Carmen Lopez; that she remembers that Mr. Somohano came to the said house and told Doña Marcelina that a bad compromise was better than a good suit, that he would deliver her five thousand pesos if she signed a mere receipt; that this happened about two months ago, after this suit had been brought.

E. DON ESTEBAN VIDAL RIOS, properly sworn, testified: that he has been a resident of the city of Ponce for more than twenty years; that he is owner of several urban properties; that he has had such properties leased and has made transactions of purchases and sales with regard to them; that he knows the warehouse and lot whereon there is a black-smith shop now possessed by the defendant Graham, fronting on Marina St.; that, in his opinion, the urban prop-
44 erty in question is worth from twenty to twenty five thousand dollars, without the machinery, taking into consideration the fact that the superficial area of the lot is two thousand seven hundred and forty meters and four hundred centimeters, and also that on the Eastern and Western sides thereof it is bounded by two important streets, which are Marina and Concordia Sts. and that it has three fronts which look to the East, South and West and considering further the price of lots in that quarter; that the part of the lot fronting on Concordia St. may be worth about three dollars the centiarea or square meter, and that part which fronts on Marina St. about four dollars a meter; that the value of said property has been greatly increased, owing to the opening of streets near by and the erection of the building "La Sultana;" that besides the buildings and dependencies on said lot, the latter is surrounded by a wall on the Southern and Western sides thereof; that walls have been built at his own expenses and he has seen the building of other walls; that the walls on said property measure from 40 to 50 centimeters in thickness; the material usually employed in the construction of said walls is stone and *"verdugada;"* that a wall of 40 centimeters thick, built with the *said* materials, as those which exist in the black-smith shop of Mr. Graham, has always cost from two to two and half dollars per square meter of wall surface; that the lease of the building, dependencies, and lot in question, without machinery, to be used
45 as a black-smith shop, is worth two hundred and fifty dollars per month.

Here ends the direct evidence of the plaintiff.

Evidence of the Defendant.

The defendant introduced the following documentary evidence which was admitted by the Court.

Deed of Dissolution of a Partnership.

1. A copy of a deed of dissolution of partnership, properly issued on the 10th of November, 1908, which deed was executed at Ponce, on the 19th of January, 1870, before Don Francisco Parra, a Notary Public, and was marked as Exhibit No. 1 of the defendant, by which document it is shown: that there appeared as parties to said deed, on the one side, Doña Bernardina Franco, in her own right and as curator *ad bona* of her minor daughter Hortensia Rabainne; Josefa Rabainne, of age; and Don Jobo Lopez as legitimate father of his three minor children begotten with Ramona Rabainne, named Ofelia, Jacobo and Herminia; and there appeared, on the other side, Doña Marcelina Rosaly, widow of Don Luis Rabainne, in her own right and as tutoress and curator *ad bona* of her minor and legitimate daughter, named Luisa, properly authorized to appear in such character; that Don Mateo and Don Luis Rabainne, the former being father of the latter, had constituted an industrial and mercantile partnership in this city, in the black-smith shop involved in this case, situated in Marina street, under the firm of M. Rabainne é Hijo, and under the terms of the contracts successively executed by them since the 13th of February, 1856; that the contracting parties have mutually agreed to dissolve and liquidate the said *said* part-
46 nership with the intention of dividing and adjudicating the capital of the partners among their heirs, inasmuch as Don Mateo had died on the 23rd of April, 1868, and Don Luis on the 8th of April, 1869; that the capital of the partnership amounted to 93254.43 *pesos*, of which 27443.67 *pesos* belong to the black-smith department, the warehouse, lot and machinery thereon; and that of the value of said property, 18000.00 *pesos* belong to the Succession of the former partner Don Mateo, and 9443.67 *pesos* to the Succession of the former partner Don Luis Rabainne; that said partnership was thereby dissolved and liquidated.

Contract of Partnership of February 8th, 1870.

2. A copy of a deed containing a contract of partnership, properly issued on the 11th of November, 1908, which deed was executed by Doña Bernardina Franco, widow of Rabainne, Doña Marcelina Rosaly, widow of Rabainne, and Don Jobo Lopez, at Ponce, on the 8th of February, 1870, before Don Francisco Parra, a Notary Public, and which was marked as Exhibit No. 2 of the defendant, from which document it appears: that the three named contracting parties constituted a partnership under the firm of "M. Rabainne é Hijo" which, according to the terms of the third clause of said deed, was to

be engaged in black-smith and carpentry works, and other industrial works, and in the wholesale and retail of irons, machinery, and other supplies for sugar cane plantations and other concerns, which was the business in which the former house was engaged, and it will undertake also the liquidation of the accounts of the latter;
47 that, according to the first clause the partnership was constituted for the term of two years to be counted from the 1st of January following, to end on the 31st of December, 1871, under the same firm of "M. Rabainne é Hijo," which was the firm of the former house, which firm could only be used by Don Jobo Lopex, one of the parties to this deed, who is the manager thereof, by virtue of the powers and authorization which all the parties hereby have conferred on him, which powers are hereby expressly given him, as fully as it might be required by law, to represent the firm in judicial or extra-judicial matters, without any limitation whatsoever, so that he may have a free, and general administration of the same, being further empowered to appoint substitutes, or confer special powers for such cases in which he may be prevented from representing the partnership; that, according to the second clause, Doña Bernardina Franco states that she brought into the partnership the capital which was assigned to her upon the death of her husband Don Mateo Rabainne in the deed of partition executed on the 28th of January, 1870, before the Notary Public authorizing this deed, which capital was represented by that which was adjudicated to her in the black-smith shop referred to, the factory, merchandise, machinery, accounts, obligations and other dependencies thereof; and that Doña Marcelina Rosaly contributed to the same, the capital which was adjudicated to her upon the death of her husband Don Luis Rabainne, in the said black-smith shop and other dependencies, as shown by the deed of partition referred to, which contribu-
48 tions of properties are specified more minutely in the accounts of capital which have respectively been opened with regard to each one in the new books of the firm; that Don Jobo Lopez does not contribute any capital, but his industry and personal attention to the shop and the business thereof; that the fourth clause provides that as the children composing the respective Successions of Don Mateo and Don Luis Rabainne have their respective shares adjudicated to them in the said shop, the rent of five per cent per annum due thereon shall be paid out of the common fund; that according to the sixth clause, the benefits or profits shall be distributed among the partners in the proportion of 45% thereof for Doña Marcelina Rosaly, another 45% for Doña Bernardina Franco and 10% for Jobo Lopez; that, under the ninth clause, Jobo Lopez was forbidden the use of the firm in transactions other than those included in the object of the partnership, it being necessary for him to consult and obtain the consent and acceptance of the members of the partnership to engage in business of a speculative nature, although proper for the partnership, and to buy wholesale or from foreign countries; that according to the fifth clause, the sum of seventy five *pesos* per month should be paid to Doña Bernardina Franco, an equal sum to Doña Marcelina Rosaly, also per month, for their private expenses and to

be charged to their respective accounts, and twenty five *pesos* per month to Don Jobo Lopez as an extra salary to encourage his good efforts in behalf of the house, said extra salary to be charged to the salary account payable out of the common fund; that it was
49 agreed in the eighth clause, that Doña Marcelina Rosaly could draw from the capital contributed by her to the partnership, during the first months of the present year, up to the sum of two thousand five hundred *pesos* in cash to pay for the value of a house which she had bought, but this shall not cause any alteration to be made in the manner of distributing the profits, already established, nor in any of the other conditions of this contract, but upon the dissolution of the partnership the amount drawn by her shall be deducted from the capital to be adjudicated to her; that it was agreed in the tenth clause that in case of the death of any of the members the partnership shall continue doing business until the expiration of the contract, but the liquidation thereof shall begin from the happening of such death and shall be carried on as far as possible.

Contract of Partnership Made on April 22nd, 1873.

3. A copy properly issued on the 10th of November, 1908, of the deed of partnership, executed by Doña Bernardina Franco, Doña Marcelina Rosaly and Don Jobo Lopez, at the city of Ponce, the 22nd of April, 1873, before Don Francisco Parra Duperón, a Notary Public of this city, and marked as exhibit No. 3 of the defendant, from which document it appears:—that the contracting parties constituted a new partnership, under the firm of "M. Rabainne é Hijo" for the term of two years and one more for the liquidation thereof, to be counted from the 31st of March, 1872, and to end on the same day and month of 1875, including the year allowed for the liquidation of the partnership; that Jobo Lopez should have the admin-
50 istration of the house, and the exclusive use of the firm thereof, by virtue of the power and authorization thereof conferred on him; that Doña Bernardina and Doña Marcelina contributed their respective capitals, as shown by the balance made on the 31st of March, 1872, which balance appears in the books of the firm, and Jobo Lopez did not contribute any money, but his industry and personal attention to the shop and the business thereof; that the new house should be engaged in black-smith and carpentry works and other industrial works, and in the wholesale and retail of irons, machinery and other supplies for sugar cane plantations, and other concerns which was the business in which the former house was engaged, and that it shall undertake also the liquidation of the accounts of the latter; that as the children composing the respective Successions of Don Mateo and Don Luis Rabainne, have their respective shares adjudicated in the said shop, the rent due thereon, as well as the expenses incurred on account of salaries for laborers, clerks, and other expenditures of the shop shall be paid out of the common fund; that the profits shall be distributed in the proportion of 45% thereof for Doña Marcelina Rosaly, another 45% for Doña Bernardina Franco and 10% for Jobo Lopez; that upon the dissolu-

tion of the partnership, the capitals shall be withdrawn in the order in which they have been contributed and the profits of the firm shall be distributed among the partners in the proportion above stated; that Jobo Lopez is forbidden to use the firm for private business or for those foreign to the object of the partnership, it being
51 necessary for him to consult and obtain the consent and acceptance of the members of the partnership to engage in business of a speculative nature and to buy wholesale or from foreign countries; that the contracting parties stated in the first fact of this deed that in a deed executed on the 8th of February, 1870, before the Notary Public authorizing this deed, they entered into a contract of partnership to speculate in a black-smith shop, situated in Marina St., in this city, which contract was made for two years, according to the conditions stated in said deed, which the Notary has now before him, and that although the term for which the partnership was constituted had expired, they carried it on for some months longer, and as the parties desire to carry on the partnership for a longer time, so that the same may be always legally constituted, they hereby enter into a new contract of partnership under the conditions above stated and the following: that according to the fifth clause, the sum of seventy five *pesos* per month should be paid to Doña Bernardina Franco, an equal sum to Doña Marcelina Rosaly, for their private expenses and to be charged to their respective accounts, and thirty five pesos per month to Don Jobo Lopez, to be charged to the salary account, which sum, and not that of twenty five *pesos,* is the one that has been paid him since the execution of the first contract, by agreement of the parties to that effect, made after the signing of the first contract, so as to encourage in that way his good efforts in behalf of the firm; that it was stipulated in the ninth clause, that in case of the death of any of the members,
52 the partnership should continue doing business until the expiration of the contract, but the liquidation thereof should begin from the happening of such death and should be carried on as far as possible.

Deed Extending the Term of a Partnership.

4. A copy properly issued on the 11th of November, 1908, of the deed extending the term of a partnership, executed by Doña Bernardina Franco, Doña Marcelina Rosaly, widow of Rabainne and Don Jobo Lopez, at the city of Ponce, the 7th of July, 1875, before Don Francisco Parra, a Notary Public, and marked as exhibit No. 4 of the defendant, from which document it appears: that the contracting parties stated that they had constituted a partnership in this city to run a black-smith shop and foundry; that the term for which said partnership was constituted expired on the 31st of March, 1875, but the same, was carried on up to the present time by private agreement of the parties; that they hereby agree to continue the said partnership which was constituted by a deed formerly executed on the 22nd of April, 1873, on the same basis and conditions which have been stipulated therein, and under the same firm of "M. Rabainne é

Hijo" which deed has been referred to under the foregoing No. 3, the said extension being made for the term of two years to be counted from the 1st of April, 1875, and to end on the 1st of April, 1877; that although the partnership will continue up to that time, even in the case that any of the members should die, this shall be understood without prejudice to any agreement which the surviving members might make with the heirs of the deceased
53 with regard to the dissolution of the aforesaid partnership.

Partition of Properties Made in the Year 1876.

5. A copy properly issued of the deed containing the partition proceedings with regard to the properties left at the death of Doña Bernardina Franco, widow of Rabainne, executed in Ponce, on the 6th day of May, 1876, before Don Francisco Parra, a Notary Public, predecessor of the Notary Don José Rodriguez, and marked as exhibit No. 5 of the defendant, from which document it appears: that Doña Bernardina Franco, widow of Don Mateo Rabainne, died in Ponce on the 3rd of September, 1875; that the said lady died leaving a will executed on the 19th of April, 1873, wherein she declared that her properties, rights and actions were such as might belong to her in the commercial partnership "M. Rabainne é Hijo" which she was carrying on in this city with her daughter-in-law Doña Marcelina Rosaly to exploit the black-smith shop and foundry, left at the death of her husband, all of which was the result of the liquidation and partition made at the death of her husband the said Don Mateo Rabainne; that she institutes and appoints as her sole and universal heirs, her daughters Josefa Rabainne y Franco, of age and unmarried; Hortensia Rabainne y Franco, a minor, married to Telesforo Bocanegra; Luisa Rabainne y Rosaly as representative of her father Luis Rabainne y Franco, the said Luisa being a minor and daughter of Doña Marcelina Rosaly and of the said Luis Rabainne y Franco; Ofelia, Jacobo and Herminia
54 Lopez y Rabainne, as representatives of their mother Ramona Rabainne y Franco, who are the minor children of the latter and of Jobo Lopez; that the said deed of partition of properties of 1876, was executed by Doña Marcelina Rosaly, as widow of Don Luis Rabainne y Franco and as tutoress and curator *ad bona* of her minor daughter Luisa Rabainne y Rosaly, properly authorized for said execution, by Don Jobo Lopez, as widower of Ramona Rabainne and as representative of his minor children Ofelia, Herminia, and Jacobo Lopez y Rabainne, by Doña Josefa Rabainne y Franco, of age and unmarried, and by Doña Hortensia Rabainne married to Telesforo Bocanegra; that the contracting parties following the advise given by the testatrix in her last will, had a family meeting with the purpose of fixing and determining what was the property belonging to the latter and left at her death, so as to make a liquidation and partition thereof in accordance with her will, and at said meeting they proceeded to the making of an inventory of said property, which was the first thing to be done, a valuation thereof being

made at the same time by expert appraisers; that for the purpose of keeping an authentic record of all the proceedings, there was made on the 30th of November, 1875, a general balance of the books of the firm "M. Rabainne é Hijo;" that from that inventory it appears, among other properties, totally amounting to 77516.91 *pesos*, the black-smith shop composed of the warehouse or building of masonry with the lot whereon the same is placed, which was valued in the deed executed in the year 1876 in the sum of 9108.00 *pesos*,
55 and it was composed further of steam engines, boilers, wheels and other implements, goods and manufactures valued at 15055.00 *pesos*, the total value given in the aforesaid deed of 1876, to the black-smith shop, composed as described above, being 24163.00 pesos; that several persons appeared as creditors of the firm, and among others, Doña Luisa Rabainne for 9049.11 pesos; the three minors Lopez for 3783.42 *pesos;* O. Lopez for 1150.35 *pesos;* Josefa Rabainne y Franco for 6814.60 pesos; and Hortensia Rabainne y Franco for 2727.38 *pesos*, but all of the above sums together with those of the other creditors who it is not necessary to mention herein, amount to 34760.59 *pesos;* that the assets of the house, including therein the 24163 *pesos* which constitute the value given to the black-smith shop, furniture, credits and other properties, amounted to 77516.91 *pesos;* that the liabilities of said firm "M. Rabainne é Hijo" are made up by the aforesaid 34760.59 *pesos* in favor of the creditors of the firm; the capital belonging to Doña Bernardina Franco, amounting to 33396.39 *pesos;* the capital of the plaintiff Doña Marcelina Rosaly, amounting to 8497.67 *pesos;* and the capital of Jobo Lopez, amounting to 862.26 *pesos*, the above aggregating 77516.91 *pesos;* that there are among the liabilities debts and capitals of the members of the partnership, therefore, in order to expedite the making of a proper liquidation and distribution of the properties belonging to Doña Bernardina Franco among her heirs and the determination of the respective amounts which should be adjudicated to them in the different properties
56 belonging to the firm "M. Rabainne é Hijo," there was made, by said deed of 1876, the following liquidation of said partnership: there are debts, according to the books, amounting to 34760.59 *pesos;* and in payment thereof there were adjudicated, among other things, 11731.09 *pesos* in the total value of 24163 *pesos* given to the black-smith shop, as explained above; the distribution showing the respective interest belonging in each property to the three members Doña Bernardina Franco, the widow Doña Marcelina Rosaly and Jobo Lopez, being the following, to wit: to Doña Bernardina Franco, in the black-smith shop, as described above, 9681.25 *pesos;* to Doña Marcelina Rosaly, in the same shop, 2478.52 *pesos;* and to Don Jobo Lopez 272.14 *pesos*, all of which interests together with the 11731.09 *pesos* adjudicated to the creditors, aggregate 24163 *pesos*, which was the value given to the said black-smith shop, in the year 1876, as stated above; that the amount of the adjudication of the capital of the deceased Doña Bernardina Franco, having been shown and determined, the same is taken as the bulk of properties to be liquidated, partitioned and adjudicated

among her heirs; that the said 9681.25 *pesos,* belonging to the widow Doña Bernardina Franco in the urban property or blacksmith shop in question, were adjudicated among her heirs as follows: to Doña Josefa Rabainne, 1936.14 *pesos;* to Hortensia Rabainné 1936.14 *pesos;* to Luisa Rabainne y Rosaly, as representative of her father, 1936.14 *pesos;* to Jacobo, Ofelia and Herminia Lopez, as representatives of their mother Ramona Rabainne, 1936.14 *pesos;* and to the same parties as legatees according to the
57 will of Doña Bernardina Franco, 1936.69 *pesos;* that the foregoing proceedings were approved by the Court of First Instance of this city, for the reason that these were rights of minors involved.

Deed of Sale of a House and Lot.

6. A copy properly issued on the 18th of March, 1909, of the deed of sale of a house and lot, executed in Ponce, on the 20th of January, 1880, before Don Joaquín Mayoral, a Notary Public, which was introduced to show the existence of the partnership in the year 1880, and marked as exhibit No. 6 of the defendant which document reads:—that there appeared, on the one side, Don Jobo Lopez y Tizol, widower, as representative and liquidator of the commercial partnership of this city, known as "M. Rabainne é Hijo," the representation and use of the firm of which he has by virtue of the deed of contract of partnership, executed on the 22nd of April, 1873, extended by another deed executed on the 7th of July, 1875, referred to in this statement under Nos. 3 and 4 of the exhibits of the defendant, and, on the other side, Don Francisco Parra Duperón, married and a Notary Public; that in the name of the partnership, "M. Rabainne é Hijo," the said Jobo Lopez conveyed in favor of Don Francisco Parra, as an adjudication in payment of a debt, a wooden house, marked with number 27 of the government, covered with shingles in bad condition, with a well for the use thereof, situated in Marina St., in this city, its lot being included in the sale, the measures of which are 17 yards common measure, at the front, or
58 West, where it is bounded by said street; 17¾ yards at the rear or East, where it is bounded by Mayor st.; and 59 yards on the North and South, being bounded on the South by another property of "M. Rabainne é Hijo," and on the North by properties belonging to the Succession of Pelayo Riera and to Don Luis Vivas; that said property was adjudicated and sold to Mr. Parra for 3441.09 *pesos,* of which the partnership owed to Mr. Parra 2941.09 *pesos,* and 500.00 *pesos* were paid in cash by the purchaser to the vendor Jobo Lopez.

Will Executed by Doña Marcelina Rosaly.

7. A copy properly issued of the deed containing the will executed by Doña Marcelina Rosaly, at Ponce, the 27th of January, 1890, before Don Joaquín Mayoral, a Notary Public, and marked as exhibit No. 7 of the defendant, which document reads:—that the testatrix

Doña Marcelina Rosaly, was married only once, her husband having been Don Luis Rabainne, deceased in which marriage they had and begot a daughter named Luisa, who married Don Augustin Schulze; that the properties now belonging to the testatrix appear in the books of the extinguished partnership "M. Rabainne é Hijo," a clear and correct statement of which will be made at the proper time by her aforesaid daughter, the said Doña Luisa Rabainne, with the intervention of the executors to be appointed hereinafter; that the testatrix institutes and appoints her aforesaid daughter Luisa, as her sole and universal heir.

Statement of Personal Property Delivered in Commission to Graham & Co.

8. A private document the genuineness of which has
59 been admitted by Graham and Dorrington, marked as exhibit No. 8 of the defendant which contains a statement of the goods delivered by Messrs. M. Rabainne é Hijo to Messrs. Graham & Co. to sell on commission, which goods appear to have been valued at 5261.34 *pesos*, and which document is signed as follows: "Ponce, December 28, 1880. M. Rabainne é Hijo, by Jobo Lopez.—Approved, though the accuracy of the value and condition of the goods is not guaranteed. Graham & Co.

Statement of Effects to be Leased to Graham & Co.

9. A private document the genuineness of which has been acknowledged by Graham & Dorrington, marked as exhibit No. 9 of the defendant, which contains a statement of the effects to be leased and pertaining to the black-smith shop of the Succession of Rabainne é Hijo, which were rented by Graham & Co. from the 15th of August, 1880, and which effects appear to have been valued at 7143 *pesos*, and which document is signed as follows: "M. Rabainne é Hijo" by Jobo Lopez.—Approved though the accuracy of the value and condition of the goods is not guaranteed. Graham & Co.

Receipts of the Lease.

10. Six private receipts of the lease, the genuineness of which has been admitted by Graham and Dorrington, drawn and signed as follows:—Received from Messrs. Graham & Co. the sum of twenty *pesos* in current money, on account of the rent belonging to this month. Ponce, February 26th, 1881.—M. R. Hijo by Jobo Lopez.—
60 The other five receipts have been drawn in the same manner and signed, M. R. é Hijo—Jobo Lopez, with the exception of the last receipt issued which is signed Mateo Rabainne é Hijo—Jobo Lopez—but their respective dates and amounts are the following:—February 11, 1881, for 35 *pesos;* January 29, 1881, for 45 *pesos;* February 19, 1881, for 35 *pesos;* March 13, 1881, for 35 *pesos;* February 5, 1881, for 35 *pesos;* all of which have been respectively marked as exhibits Nos. 10, 11, 12, 13, 14 and 15 of the defendant.

Receipts of Lease from Doña Marcelina Rosaly in Behalf of Her Daughter.

11. Ten private receipts of lease drawn and signed as follows:—Received from Messrs. Graham & Co. the sum of twelve pesos on account of the part of rent which belongs to my daughter Luisa.—Ponce, February 3rd, in the year 1883.—Marcelina Rosaly.—The other nine receipts have been drawn and signed in the same manner, but their respective dates and amounts are as follows: February 10, 1883, for 12 *pesos;* February 15, 1883, for 17.86 *pesos;* January 20, 1883, for 12 *pesos;* January 27, 1883, for 12 *pesos;* March 15, 1883, for 14.86 *pesos;* March 10, 1883, for 15 *pesos;* March 3rd, 1883, for 12 *pesos;* February 18, 1883, for 12 *pesos;* February 24, 1883, for 12 *pesos;* respectively marked as exhibits Nos. 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of the defendant.

Record from the Federal Court.

12. Record of the testimony of witnesses who testified in the Federal Court before the Master in Equity, Don Robert A. Miller,
61 in the suit brought therein in the year 1900, by Bernardo and Hortensia Bocanegra against Don Roberto Graham y Frazer, and marked as exhibit No. 26 of the defendant, in which record appears the testimony of Doña Marcelina Rosaly, given at said date, wherein she testified: "that the partnership M. Rabainne é Hijo continued in the year 1879"—That in the testimony of Doña Marcelina Rosaly the following words of the said Master appear: "books of Rabainne é Hijo, produced" and then the following question and answer: "In whose possession those books were?—Mine."

Mortgage Constituted by Roberto Graham in Favor of Francisco Parra.

13. A copy properly issued of the mortgage deed executed by Roberto Graham y Frazer in favor of Francisco Parra Duperón, before Don Joaquín Mayoral, a Notary Public, at Ponce, the 20th of September, 1894, marked as exhibit No. 27 of the defendant, from which document it appears:—that Don Roberto Graham admitted that he was owing to Don Francisco Parra the sum of 4791.57 *pesos,* which the latter loaned to the former for the purchase of several interests in the property described in the fourth fact of the amended complaint; that as security for said amount, Don Roberto Graham constituted a mortgage upon the said urban property described in the aforesaid fourth fact of the amended complaint, in favor of the creditor Don Francisco Parra; that said deed was properly recorded in the Registry of Property.

Letter Addressed to Graham & Co.

14. Original letter, the genuineness of which has been properly acknowledged, marked as exhibit No. 28 of the defendant,
62 addressed to Messrs. Graham & Co., which literally copied reads as follows:—Messrs. Graham & Co. Dear Sirs:—Please retain from the monthly payment made by you to the Succession of Rabainne é Hijo, the sum of 7.44 *pesos* per month to be paid to the Succession of Don Pedro José Valls, from the 15th of September next, which amount is paid to the same as interest of 496 *pesos* which the Succession Rabainne is owing to the latter. Yours truly—Marcelina Rosaly.—In behalf of my nephews, Manuel Lopez—Hortensia R. de Bocanegra.—Ponce, August 24, 1882.

Promissory Note in Favor of Don Pedro José Valls.

15. Exhibit No. 29 of the defendant, the genuineness of which has been acknowledged by Graham, which literally copied reads as follows:—As administrator and attorney-in-fact, with a general power of attorney, of the firm M. Rabainne é Hijo, I hereby acknowledge to owe to, and offer to pay to the order of, Don Pedro José Valls, on the 22nd of June next, in the year 1877, the sum of 1000 *pesos* legal currency, received to our entire satisfaction in gold and silver coins, and as interest on this amount we bind ourselves to pay 1½% monthly until said date, waiving hereby all exceptions with regard to the money not counted, evidence and term allowed by law, and subjecting to the payment thereof, the properties now held and which may be acquired hereafter by the said partnership.—Ponce, November 22nd, 1876.—M. Rabainne é Hijo by Jobo Lopez.—Received on this date, on account of this note, the sum of 503.94 *pesos*, the amount owed as balance thereof being 496.06 *pesos*, for which I shall receive hereafter 7.44 *pesos* per month as
63 interest thereon.—Ponce, October 21st, 1880.—Pedro J. Valls.—Pay to the order of Don Fernando Marzan one half of the amount of this note as value received.—Ponce, December 10, 1885.—Cayetano Valls.—Pay to the order of Dr. E. Vidal one half of the balance on this note, that is, 248 *pesos*, which belong to me as heir that I am of Don Pedro José Valls.—Ponce, December 4th, 1885.—Francisco Valls.—Pay to the order of Don Roberto Graham without further responsibility the part on this note which belongs to me—Ponce, August 6, 1887.—Fernando Marzán.—Pay to the order of Don Roberto Graham without further responsibility the part which belongs to me on this note.—Ponce, August 6, 1887—Dr. E. Vidal Rios.

Receipts of Rents from Hortensia R. de Bocanegra.

16. Six private receipts, the genuineness of which has been acknowledged by Graham and Dorrington, drawn and signed as follows: Received from Messrs. Graham & Co. the sum of 39.68 *pesos*

for the part which belongs to me in the rent of this month.—Ponce, January 15, 1886—Hortensia R. de Bocanegra—The other five receipts have been drawn and signed in the same manner, but their respective dates and amounts are the following:—February 15, 1886, for 39.68 *pesos;* March 15, 1886, for 39.68 *pesos;* April 15, 1886, for 39.68 *pesos;* May 15, 1886, for 39.68 *pesos;* June 15, 1886, for 39.68 *pesos;* July 15, 1886, for 39.68 *pesos;* marked respectively as exhibits Nos. 30, 31, 32, 33, 34, 35 and 36 of the defendant.

Receipts of Rents Issued by Telesforo Bocanegra.

64 17. Five private receipts, the genuineness of which has been acknowledged by Graham and Dorrington, drawn, signed, and for the amounts, following:—Received from Messrs. Graham & Co. the sum of thirty nine *pesos* and sixteen *centavos* for the part belonging to my wife in the rent of this month. Ponce, September 15, 1886.—Telesforo Bocanegra.—The other four receipts are dated, respectively, the 15th of the months of October, November and December, 1886, and of January, 1887, marked respectively as exhibits Nos. 37, 38, 39, 40 and 41 of the defendant.

Other Receipts of Rents.

18. Three private receipts of rents, the genuineness of which has been acknowledged by Graham and Dorrington, marked respectively as exhibits Nos. 42, 43 and 44 of the defendant, which literally copied read as follows:—Received from Messrs. Graham & Co. the sum of 39.16 *pesos,* for the part of the rent of the black-smith shop belonging to the minor children of the deceased Hortensia.—Ponce, February 15, 1887. Telesforo Bocanegra.—Received from Don Roberto Graham the sum of 156.64 *pesos* besides the costs imposed upon him in the two suits brought against the firm Graham & Co. of this city, for the part of rent belonging to the months of March, April, May and June. Ponce, June 15, 1887. Telesforo Bocanegra.—Received from Don Roberto Graham the sum of 39.16 *pesos,* for the part of rent of the black-smith shop, belonging to my children. Ponce, July 15, 1887. Telesforo Bocanegra.

Books of Graham & Company.

65 19. Six books of accounts of the extinguished firm Graham & Co., kept according to the requirements of the Code of Commerce, marked respectively as Exhibits Nos. 45-46-47-48-49 and 50 of the defendant, from which appears the following:—that *the* during the first nine months of the lease made in 1880, Graham & Co. paid the rents of said lease to Jobo Lopez who signed the receipts, as stated under No. 10 of this bill, in the documentary evidence of the defendant; that Doña Marcelina collected the receipts as tutoress of her daughter Luisa, there being nothing to show that she collected any rents in her own right; that in the year 1882, wherein 200 *pesos*

were paid as monthly rents, they were distributed as follows: to the Succession of Ramona Rabainne 90.92 *pesos;* to Hortensia Rabainne de Bocanegra 40.68 *pesos;* to Luisa Rabainne 68.40 *pesos;* and that in the following years during which the lease was in force, the rents were distributed among the same persons and in the same proportion.

Testimony of Witnesses Introduced by the Defendant.

(*a*) The witness ALFREDO DORRINGTON, duly sworn, testified: that he has lived in Porto Rico since the year 1879; that he has had business with the defendant Graham since the year 1880; that he has now no business relations with him, as those which existed between them ceased in the year 1885; that he had formed a partnership with Graham under the firm of Graham & Co., and that their lines of business were carting, black-smith work and foundry which were carried on in the shop situated in Marina St., on the same place where it exists to-day, which shop they received in lease from
66 the partnership M. Rabainne é Hijo; that he had no intervention in the contract of said lease; that the negotiation was being carried on with Jobo Lopez before the signing of the contract of lease; that Jobo Lopez was the manager of the business of the firm M. Rabainne é Hijo; that in the year 1880, after Graham & Co. rented and took possession of the shop, the witness examined the books of M. Rabainne é Hijo, which were in said shop and in the possession of Jobo Lopez; that Jobo Lopez had not withdrawn them from the shop, but that he did so afterwards; that the reason why he examined said books is that on a certain occasion Jobo Lopez told the witness that he had received a note from Doña Marcelina Rosaly asking for money, and that the said Jobo Lopez told the witness that he was tired of that lady, and that she had taken more than what actually belonged to her; that Jobo Lopez opened the books;—Did the witness see in the books of the firm named "M. Rabainne é Hijo" any account between the latter and Doña Marcelina Rosaly?.—Yes Sir.—Did said account show that Doña Marcelina had taken more money than what belonged to her?.—Yes Sir.—Do you specifically say that you saw the account?.—Yes Sir.—Was the balance of that account in favor or against Doña Marcelina?.—It seemed to be against her; that on account of said lease they were in constant relations with Jobo Lopez, to whom they paid the rents for nine months during the year 1880; that afterwards, they continued paying said rents to Ofelia, Herminia, and Jacobo Lopez, Luisa Rabainne
67 who is the daughter of Doña Marcelina, and to Hortensia Rabainne de Bocanegra, paying proportionally to every one up to the year 1885 when the witness left the house; that from the year 1880 up to 1885, Doña Marcelina did not make any claim of rents belonging to her, but she collected the rents belonging to her minor daughter Luisa, and used to send, some times, for one *peso*, at another time, for two *pesos*, and at the end of the month, for the balance; that he knows the handwriting of Jobo Lopez; six receipts are shown to him (Exhibits Nos. 10 to 15 inclusive) signed: "M. Rabainne é Hijos, by Jobo Lopez" and the witness acknowledges

the signature as that of Jobo Lopez; two private documents are shown to him, one is a "statement" of what was to be leased in the black-smith shop of M. Rabainne é Hijo (Exhibit No. 9) and the other, another statement of personal properties delivered to Graham & Co. to sell on commission (Exhibit No. 8). Both documents appear to have been signed by "M. Rabainne é Hijo by Jobo Lopez," and the witness acknowledges that signature as that of Jobo Lopez; that the letter document bears the date of October 28, 1880, after the lease was made.—Cross-examined by the plaintiff, he testified: that he speaks English; that he remembers to have appeared as a witness in the Federal Court to testify in a suit involving the building wherein the back-smith shop in question is installed, which testimony he gave under oath, before Mr. Miller, Master in Equity; cross-ex-
68 amined as to whether he remembered to have testified in the Federal Court, in the suit brought by Bernardo and Hortensia Bocanegra against Roberto Graham y Frazer, in 1900 or 1901, stating under oath that the engineering business and black-smith shop of Graham & Co. was acquired from the descendants of Rabainne, he answered that it was a mistake, it was an error, that he remembers that said question was put to him, but he does not remember to have said "descendants," that he does not remember what he answered but does remember that he did not use the word "descendants" of Rabainne; that in 1880 Jobo Lopez appeared to be in charge of the books and that he was the manager and representative of Doña Marcelina, and that he knows that because Jobo Lopez was in the shop and had intervention in the contract of lease which was made by him, and all the negotiations were conducted by him and because Jobo Lopez told him that he was the manager thereof; that he knew that Jobo Lopez was the managing partner of "M. Rabainne é Hijo," because he was in charge of their business and appeared as such; that he knows that Jobo Lopez signed said documents and receipts in behalf of M. Rabainne é Hijo," just because he was in charge of the shop; that he believed that Jobo Lopez had authority to sign in that behalf, because he was in charge of the shop and was tutor for the minor children; that Mr. Parra's father, who was the executor and tutor of the Succession, informed him that the minors who were represented by Jobo Lopez, Hortensia Rabainne
69 and the other persons who signed the contract of lease in 1880, were partners under the firm of "M. Rabainne é Hijos;" that he does not remember whether or not, in the year 1880, when the contract of lease was signed, the partnership M. Rabainne é Hijos was dissolved or doing business, but he believes that said partnership existed at some time and was formed by the person who signed the lease in 1880; that he never saw any public deed or document of any kind, showing that the persons who signed the lease in 1880 had constituted a partnership under the firm of M. Rabainne é Hijos; that of the books of M. Rabainne é Hijos, he saw only the book of current accounts, that he knew that said book belonged to M. Rabainne é Hijos because Jobo Lopez told him so, and the book was headed and sealed as it used to be done at that time;—What kind of an examination did you make of that book?—Nothing, only that

account;—that he never saw the ledger, nor any other book, except the book of current accounts, and that he does not remember the note made in that book; that he cannot tell if that book was of the year 1869 or 1850; that the signature of Jobo Lopez which appears in the contract of lease of the year 1880, is genuine, and that the signature of Graham & Co. which appears in said contract of lease was affixed by Roberto Graham; that the rents were paid for nine months, more or less, to Jobo Lopez, and, afterwards, following the advise of Jobo Lopez, they were paid to each one; that he remembers that he testified in the said proceeding in equity, before the
70 Federal Court, with regard to the value of certain machinery which together with the lot and building were leased to Graham & Co. in the year 1880; and that said machinery is referred to in the first fact of the contract of lease of 1880; that he knew the black-smith shop in the year 1879, being managed by Jobo Lopez, and that, at that time it was almost closed, as only one leaf of the door was opened; that when the rents were paid to Jobo Lopez, the latter was the representative of all the parties concerned, but he never showed to the witness any document showing that he had such representation, and that appearance led him to believe that Jobo was such representative; that during all that time he saw Doña Marcelina very seldom and never spoke to her.—To new questions put to him by the defendant, he answered and said: that while the rents were being paid to Jobo Lopez, none of the other co-owners made any claim for the parts of rents belonging to them, and that everyone of them was satisfied that the rents should be paid to Jobo Lopez.—At this stage of the trial, the plaintiff offered, and it was admitted in evidence, to contradict the credibility of this witness with regard to the persons from whom the black-smith shop was acquired in 1880, the testimony given by this witness in the Federal Court, stated in this bill under No. 5 of the plaintiff.

(*b*) The witness DOÑA MARCELINA ROSALY, duly sworn, testified:

MARCELINA ROSALY.

DEFENDANT'- ATTORNEY: What is your name?
WITNESS: Marcelina Rosaly.
71 A. Where do you live? In Ponce?
W. Yes Sir.
A. Say, Doña Marcelina, are you the widow of Don Luis Rabainne?
W. Yes Sir.
A. Did you belong or were you a member of a partnership consituated in 1870, under the firm of M. Rabainne é Hijos?
W. ——.
A. Were you a member of that partnership?
W. My husband constituted a partnership with his father when we married.
A. When your husband and your father-in-law died, did you constitute a partnership with Bernardina and Jobo Lopez?
W. Yes Sir.

A. How long did that partnership last?
W. I do not remember.
A. What was the capital contributed by you to that partnership, if you can remember?
W. My inheritance amounted to twenty four thousand *pesos*, which I received from my tutor.
A. Did your husband contribute that amount to the partnership?
W. Yes Sir.
A. And when your husband died, did they return that money to you?
W. The partnership continued.
A. Did you contribute to that new partnership your twenty
72 four thousand *pesos*?
W. They were there.
A. Do you not remember how long the partnership lasted?
W. No Sir.
A. Who was the managing member of that partnership? Who was the administrator thereof?
W. When Ramona married the brother of my husband, Jobo Lopez was there as a clerk.
A. But was he not the manager of the partnership?
W. He had an interest.
A. Who was the manager of the partnership, who was at the head of the business?
W. Jobo Lopez.
A. Do you remember when that partnership ended?
W. No sir.
A. Do you remember when the building and machinery were leased to Mr. Graham?
W. I remember that it was leased to him, but I do not remember in what year.
A. When you leased to Mr. Graham, did the partnership constitued by you, Doña Barnardina and Jobo Lopez exist or not?
W. I do not remember. Don Francisco Parra was the one who had intervention in such matters.
A. Was Don Francisco Parra your counselor?
W. Yes sir.
A. Your counselor?
W. Yes Sir.
73 A. Do you remember when that partnership was liquidated?
W. No.
A. Do you remember what was the capital which belonged to you at the liquidation of that partnership, at the time said liquidation was made?
W. No Sir.
A. Do you remember the capital which belonged to your daughter Luisa?
W. I am not sure.
A. Could you tell approximately?
W. No Sir.

A. After Mr. Graham rented that property, which, according to that document, was on the 15 of August, 1880; after that contract of lease was made, to whom did Mr. Graham pay, in the beginning, the rents of the lease?

W. The first month I went to collect, and they told me that they would give twelve *pesos* per week, because I requested that money and the balance at the end of the month.

A. You say that this was the first month. What first month was that?

W. The month of the lease.

A. Do you mean the year 1880, or when you began to collect?

W. When I began to collect.

74 A. But before you began to collect, were not the rents paid to some other person?

—. ——.

A. The first month that you went to collect did you ask for twelve *pesos* and that the balance should be given to you at the end of the month?

W. Yes Sir, the rents of my daughter.

A. And before you went to collect, to whom were those rents paid?

W. That was the first month that they paid me.

A. Was it on the first month that Mr. Graham paid you?

W. I went to collect and Mr. Vijas paid me. Then I went to see Hortensia, my sister-in-law, and told her: "they have given me nothing"; and she advised me to go to Don Francisco Parra. I say the truth because he is dead. I told him: "Don Francisco, they have given me nothing"; and then Don Francisco answered: "it is better for you to wait until the expiration of the four years of the lease, and then you will collect the whole amount at once.

A. Do you remember the signature of Jobo Lopez?

W. I do not.

A. Look at that signature. (Several receipts signed by Jobo Lopez are shown to her).—This receipt reads: "Received from Messrs. Graham & Co. the sum of twenty one *pesos* legal currency, on account of the rents, etc., etc." Is that the signature of Jobo Lopez?

W. I do not remember.

75 A. Did you answer a while ago that what you collected from Graham & Co. was for your daughter?

W. Yes Sir.

A. How long a time did you collect from Graham & Co. for your daughter?

W. Until she married, but I do not remember the year.

A. Do you not remember when your daughter was married?

W. No Sir.

A. Do you not remember, more or less, how many years elapsed after 1880 up to the time when your daughter was married?

W. ——.

A. Did you say that while she was unmarried you collected in her behalf?

W. Yes Sir, but I do not remember when she was married.

A. Would you recognize your signature if I would show it to you?
W. Yes Sir.
A. Is this signature "Marcelina Rosaly" yours?
W. Yes Sir.
A. This is a receipt which reads: "Received from Graham & Co. the sum of so much, etc."
W. Yes.
A. Did you still collect in behalf of your daughter in the year 1883, which is the date of this receipt?
76 W. I do not know.
A. Did you collect for her while she was unmarried?
W. Yes Sir.
A. Were those amounts which you received from Graham & Co. for the rents belonging to your daughter?
W. Yes Sir.
A. What was the monthly amount belonging to your daughter?
W. Seventy eight *pesos.*
A. How much was the amount of the lease of the black-smith shop?
W. I do not remember, because I never intervened in such matters.
A. Was that rent for the building and for what the same contained within?
W. Yes Sir.
A. So that, since the year 1880 no rent was paid to you?
W. Nothing; not a cent.
A. Before Mr. Graham rented, did they pay you anything?
W. Yes Sir.
A. But ever since the lease was made to Mr. Graham, not a cent was paid to you?
W. No Sir. I went on a certain day to Mr. Graham and told him: "I have great necessities" because when my daughter
77 married she took her rents. Then Mr. Graham answered: "You have nothing here; that which is there has been paid for with my money." He told me so in a very contemptuous manner, and I went away. Ever since I depend on alms for a living. I have a note here of those persons who have helped me.
A. Did you go to Mr. Graham and he told you "that is mine, I bought it"?
W. Yes sir, because I told him "I come to find out about the condition of my property."
A. In what year did that happen?
W. After the four years had elapsed.
A. Of the lease?
W. Yes sir.
A. Did you not claim anything during those four years of the lease?
W. Because Don Francisco Parra told me to wait until the four years should have elapsed.
A. Were the other persons paid weekly or monthly?
W. I do not remember.

A. Did they depend on that for their living?
W. Yes sir.
A. But was your daughter Luisa paid?
W. Yes sir.
A. And you were not paid?
W. No sir.
A. Did you say that Jobo Lopez was the manager of everything?
78 W. Yes sir.
A. Did you ever speak to Jobo Lopez claiming what belonged to you?
W. He knew my necessities.
A. Since Don Francisco Parra was your counselor, what reason did he give you when he advised you to wait four years and not to collect immediately?
W. He said "It is better for you to collect everything together."
A. But did you not need that money to live?
W. Yes sir, because I had nothing.
A. And how do you explain that Don Francisco Parra should have told you to wait four years to eat?
W. I do not lie.
A. Was that lease for four years, extended afterwards?
W. After that, I had not any intervention in those matters.
A. Tell me one thing, Madam; up to what year was Jobo Lopez the manager of the properties of M. Rabainne é Hijos?
W. I do not know. Until the lease was made. I do not know. I do not know.
A. After the lease was made, was any property left to you besides the black-smith shop?
W. Of course.
A. Was it?
79 W. Yes sir.
A. Do you remember a house that you had in Marina st.?
W. ——.
A. In that contract of lease which has been introduced in evidence and which is signed by you, Hortensia, Jobo Lopez and Mr. Graham, it is said that certain personal properties were delivered which had been stated in a document signed in duplicate. What do you know about that?
W. ——.
A. This is the contract of lease. It is said in this contract: "the undersigned Successors of M. Rabainne é Hijos leases to Graham & Co., etc." Is that it?
W. I do not know.
A. Did Jobo Lopez sign that inventory in your behalf?
W. I know nothing.
A. Let us look at this signature of Jobo Lopez to see whether you acknowledge it. To see whether you remember whether this is the signature of Jobo Lopez.
W. I do not remember.
A. Did he sign in your behalf the transactions which he made?

W. I do not know.

80 A. Did you ever speak to Mr. Graham's wife with regard to these matters?

W. Never.

A. How do you know that you had an interest in that building? From which document do you derive your right to an interest therein?

W. My capital was contributed therein.

A. Two thousand *pesos* were adjudicated in the black-smith shop. Do you remember that?

W. I do not.

A. Do you know about the partition of properties made with Doña Bernardina?

W. I do.

A. And did you know that your capital had been reduced?

W. ——.

A. Why did you allow twenty nine years to elapse without claiming your capital?

W. I have taken many steps with regard to that matter; some parties or persons told me that they would consider it, and others that they were considering it.

A. Is it, or is it not true, Madam, that all persons who might have knowledge of the affairs of M. Rabainne é Hijos have already died?

A. Is it or is it not true, that all persons who might have come to testify here with regard to this matter have died?

81 W. ——.

A. Is Jobo Lopez dead or alive?

W. He died, you know that very well.

A. Do the Bocanegra people live or have they died?

W. They have died.

A. Does Don Francisco Parra live, or did he die?

W. He died.

A. Is there any other person who might testify here with regard to that claim?

W. Those mentioned.

A. We had a subpœna issued to you to produce the books of M. Rabainne é Hijos. Why did you not bring them?

W. Because I do not have them.

A. Did you not have said books when a suit was brought in the Federal Court, in 1902, by Bernardo and Hortensia Bocanegra against Mr. Graham?

W. Bocanegra requested me to give him the books.

A. Had you had the books?

W. I had them, but I gave them to Pozuelo, who gave them to Don Augusto Pasarell and Don Augusto delivered the same to Bocanegra by my order.

A. Did you see those books in the Federal Court?

W. At Mr. Miller's.

82 A. But when they asked you there: "In whose possession are those books?" did you not answer: "In my possession."

W. I do not know about that.

A. Do you know where those books now are?
W. No sir.
A. Do you know who took them from the hands of Mr. Miller?
W. No sir.
A. Did you not try to take those books back, although, according to the will executed by you, your right was derived from said books?
W. ——.
A. Categorically: do you know whether your capital had been greatly reduced at the death of Doña Bernardina?
W. I do not know.
A. Did you sign the deed executed by Doña Bernardina Franco?
W. I do not deny it, but I do not remember.
A. Do you remember, or did they pay you a monthly rent, when the partnership existed, for your private expenses?
W. Yes sir.
A. Do you remember to have taken more than what they gave you?
W. Sometimes.
A. Do you remember to have made a journey to Paris between the years from 1870 to 1880?
83 W. Yes sir.
A. How many times do you remember to have gone to Paris?
W. Once.
A. How long did you remain there?
W. Eight or ten months.
A. Do you remember whether it was before or after the death of Doña Bernardina?
W. I do not know.
A. Did Doña Bernardina die before the year 1876?
W. I do not remember.
A. Who sent you money to Paris?
W. I constituted a mortgage upon my house which is now the property of Reverón, and I sold the small house which is on the corner, to Juan Seix to pay the mortgage off.
A. While you remained at Paris, did not Jobo Lopez send you money through the firm Pastor, Marquez & Co.?
A. Is that true?
W. I do not remember.
A. And do you not remember if he sent you money through any other firm?
W. No, sir.
A. Do you remember how much you spent?
W. I do not.
A. Do you remember if about the years 1880 or 1881, there was a meeting of all the members of the family at Don Francisco
84 Parra's, and they made a liquidation of your properties, and there it was made to appear that as you had spent your capital you had no share in the properties?
W. ——.

A. Do you remember whether said meeting was held in the Office of Mr. Parra?

W. I do not.

A. Do you remember that you owed five thousand *pesos* to the firm M. Rabainne é Hijos?

W. No sir.

A. Do you not remember that your debt to that firm reached the sum of five thousand *pesos?*

W. I do not.

A. Do you remember the capital that you had in the firm when the lease was made to Mr. Graham?

W. No Sir.

A. And why do you believe then that you have money?

W. Because I had my capital in the warehouse.

A. Then you base your claim on the ground that when you married you had your money there?

W. ——.

(Plaintiff:)

A. Will the witness please state, Did you marry Don Luis Rabainne before or after the year 1870?

W. I do not remember the date.

A. When you married Luis Rabainne, had he any money or not?

85 W. He had nothing; he worked with his father.

A. Was he not a partner at that time?

W. No sir.

A. When you married him, did you bring any sum of money into that marriage.

W. Twenty four thousand *pesos.*

A. The black-smith shop which the defendant has, to whom did it belong when you married Luis Rabainne?

W. To Mateo Rabainne, my father-in-law.

A. Was it of masonry?

W. It was an old wooden house and there was by the side of it a two story house wherein the family lived.

A. Do you remember, do you know whether your husband became a partner of Don Mateo Rabainne after your marriage?

W. One year or nine months afterwards.

A. What capital did he contribute to become a partner?

W. Mine.

A. Do you know whether after Luis Rabainne married you and constituted said partnership with Don Mateo, said old and wooden buildings were changed for others?

W. Yes Sir.

A. What was the change made?

W. They were built of masonry and some steam engines

86 were bought for the same.

A. With what money?

W. It must have been with mine, because it was contributed thereto.

A. Did you tell the adverse party that in the year 1880, when that building was leased to Mr. Graham, you claimed your part of the rents?

W. Yes Sir.

A. And that you waited to collect until the end of the four years, following the advise that you say was given you?

W. Yes Sir, by Don Francisco.

A. Did you also at that time, and before that time, or when you made the journey to Paris, to which you referred a little while ago, possess some other properties?

W. My house where I lived and the house which I sold to Juan Seix.

A. To whom does the house where you lived belong today, or to whom was it conveyed afterwards?

W. To Reverón.

A. And do you remember if you paid said expenses with the amount of the mortgage or the sale of those houses?

W. I made that journey with that money.

A. And during the first four years of the lease made to the
87 defendant, could you, or could you not live with the rents received by your daughter?

W. We lived with that before, and besides I had my house leased.

A. Did you say that after the said four years had elapsed, you tried to settle your affairs?

W. Yes Sir.

A. Could you mention any person?

W. Don Emilio Pozuelo.

A. Who was that gentleman?

W. He was a lawyer; a lawyer or a prosecuting attorney?

A. And besides Don Emilio Pozuelo?

W. Don Augusto Pasarell and Don Luciano Ortiz and then Lopez Tord.

A. And what did they tell you?

W. To wait, that they would consider the matter.

A. Did the said Jobo Lopez to whom you referred formerly, frequently show you some of the books of M. Rabainne é Hijos?

W. He never did.

A. Did he talk to you and inform you about the affairs of the firm in general?

W. No Sir.

A. Do you know one Mr. Vijas?

W. Yes Sir.

A. Do you know what connection Mr. Vijas had with Mr. Graham?

88 W. I do not; I know that he was in the house.

A. Did you know one Antonio Bejoña?

W. Yes Sir, he was the book-keeper of the firm.

A. Of what firm?

W. M. Rabainne é Hijos.

A. At the time when you, Doña Bernardina and Jobo Lopez were partners?

W. Yes Sir.

A. And Mr. Vijas?

W. He was the one who paid me the monthly amount, that is the rents.

A. Have you ever signed, in favor of Mr. Graham, any sale of your rights upon that warehouse and building?

W. No Sir.

A. Do you remember to have ever signed a liquidation of M. Rabainne é Hijos, wherein you acknowledged that you had no longer any rights?

W. No Sir.

A. Do you remember whether after the year 1876, when Doña Bernardina Franco died, you Doña Bernardina and Jobo Lopez continued the partnership?

JUDGE (to counsel): After the death of Doña Bernardina?

A. I mean her heirs.

W. No Sir.

89 A. In what capacity did you continue in the management of that shop?

W. Jobo Lopez and we, the partners, remained.

A. Do you mean to say that after the death of Doña Bernardina the partnership was continued?

W. As a partnership, no.

A. Did you never sign any partnership deed?

W. I do not remember.

A. Did you continue in a community of property?

W. Yes Sir, as Jobo Lopez was the representative.

A. What connection, what powers had Jobo Lopez at that time with regard to the said warehouse and your properties?

W. I do not know; it remained unsettled.

A. Did Jobo Lopez, after the death of Doña Bernardina Franco, consult with you to collect the rents, after the year 1880?

W. He was in charge of the warehouse.

A. In charge of the building?

W. Yes Sir.

A. Did you refer to the extinction of the partnership of Mateo and Louis Rabainne?

W. My idea was that I had my capital there and that that was for my daughter.

A. When you constituted the partnership with Doña Bernardina and Jobo Lopez, after the death of your husband Louis

90 Rabainne, did you both contribute the ownership of that property to the partnership or just the use of the building?

W. Everything was contributed.

(Defendant:)

A. Doña Marcelina: You answered this morning to questions of your counsel, that after the liquidation made at the death of Doña Bernardina, the connection of Jobo Lopez with the business remained unsettled, did you mean to say that Jobo Lopez had no

longer any authority to collect in behalf of the firm M. Rabainne é Hijos?

W. He remained as manager.

A. Then were the acts done by Jobo Lopez, after the liquidation made at the death of Doña Bernardina, as manager of the firm M. Rabainne é Hijos, were valid or not, were they, or were they not, approved by you?

W. We left him there to sell what was there; so that he might sell the goods.

A. Did he remain there?

W. He remained in charge; there was no partnership; no document of any kind.

A. This is a document wherein Jobo Lopez, as attorney-in-fact of M. Rabainne é Hijos acknowledged to have received a loan on Nov. 22nd, 1876, from Don Pedro J. Valls?

91 W. ——.

A. And he signed M. Rabainne é Hijos by Jobo Lopez. Was he authorized to do that?

W. ——.

A. Does that mean that after the death of Doña Bernardina and after the liquidation that was then made, in 1876, Don Jobo Lopez, as attorney-in-fact of the firm M. Rabainne é Hijos took one thousand dollars for the partnership from Don Pedro J. Valls?

W. I know nothing about that.

A. Let us see, Madam, if you recognize this signature which is yours. This is a letter of 1882, the handwriting thereof, as you will see, is that of Don Francisco Para; I do not know whether you will remember. But is this signature which reads Marcelina Rosaly yours?

W. ——.

A. This is a letter signed about the year 1882 authorizing Graham & Co. to discount a part of the rents to pay certain interest to Don Pedro J. Valls. Is that your signature?

W. Yes sir.

(DEFENDANT:)

A. Madam; this morning we exhibited to you a will made by you in 1890, wherein you stated that the properties that you had, appeared from the books of the extinguished partnership

92 M. Rabainne é Hijos. Some questions were put to you, but I want the matter to be made clear. When you said that your properties appeared from the books of the extinguished partnership M. Rabainne é Hijos, did you refer to the books which you had in your possession?

W. I referred to the books of the first partnership M. Rabainne é Hijos, constituted by Mateo and Luis Rabainne.

A. Tell me one thing, Madame: when you made the said will, did you not know that your properties had been reduced?

W. No sir.

A. When you made that will, did you not know that in the year 1876 your capital of twenty four thousand *pesos* had been reduced to eight thousand?

W. I paid no attention to that.

At this stage, the plaintiff testified in her own behalf and in rebuttal of the witnesses who testified lately, after the rebutting evidence had been introduced.

A. Could you tell, Doña Marcelina, whether you ever had any conversation with Doña Lisi Graham with regard to the building and lot now claimed by you from Don Roberto Graham?

W. Never; never.

A. Could you tell what was the cause that moved you to talk to Doña Lisi Graham?

93 W. Because I went to talk to her about the singing in the religious festivity of the *Virgen del Carmen.*

A. Did you ever talk to Doña Lisi with regard to this matter?

W. Never.

A. Could you tell, Doña Marcelina, if you know Mr. Somohano?

W. I do.

A. Do you remember to have talked to the said Mr. Somohano with regard to this matter?

W. He asked me whether I had any affair with Graham; and then he asked me whether I was willing to make an amicable compromise for five thousand *pesos;* but he did not tell me who had sent him. My most ardent desire was that my daughter should not sell her interest in the black-smith shop, but that she should keep it.

A. Was it your desire that your daughter should not sell?

W. Yes, sir, so that she might have something to depend upon.

A. After the sale of the interest of your daughter was any property left to you?

W. No sir.

A. Has Mr. Graham, or any person who was his agent, ever talked to you with regard to this matter?

W. Never; only when I went to the black-smith shop, which he said he had bought.

94 (DEFENDANT:)

A. Do you remember to have delivered to your counsel the report of which Mr. Pasarell spoke?

W. I do not know where it is.

A. Did you have it?

W. All that was said by Mr. Pasarell is the truth.

A. But did you have it before you brought this suit?

W. What I have given, is what I had.

A. Was not the report made by Begoña and Mr. Vijas among what you have given?

W. There was one made by Begoña and Mr. Vijas, signed by both.

A. Did you give it to your counsel?

W. It is there among the papers.

(C.) The witness DON ROBERTO GRAHAM Y FRAZER, defendant, duly sworn, testified: that he is of Scotch nationality; that he has been in Porto Rico for forty nine years; that he is the owner of the black-smith shop and foundry in question, which is situated in

Marina St.; that before he became the owner thereof, he had in lease, since the year 1880, the same property and warehouse; that he rented it from Jobo Lopez and that the latter was the managing partner of the lessor partnership Rabainne é Hijos, as stated in the contract of lease made in the year 1880; that he dealt with Jobo Lopez who informed him with regard to the character with
95 which he acted, as he had known him in the management thereof, ever since many years prior thereto; that he understands that the lessor partnership was named Successors to M. Rabainne é Hijos; that he thinks that the document was drafted by the said Jobo Lopez; that they went to take his signature; that at first he paid the rents to Jobo Lopez, and afterwards to such persons as had interest in the property according to a note given him by the said Jobo Lopez; that he paid said rents to Jobo Lopez up to April, 1881; that afterwards Jobo Lopez went to his office, (Graham's) and told him that he had to pay to so and so, so much, to so and so, so much,—and that was the note he gave him; that he continued paying the rents as suggested by the said Lopez; that according to said suggestion, he paid to the daughter of Doña Marcelina 34.02% of the rents; to Hortensia Bocanegra 20.34%; and to Jobo Lopez 45.46%, and that he did not pay to anyone else; that the total amount of the rents was paid to the said three persons; that according to the knowledge of the witness, Doña Marcelina had no participation in said rents, that it was just the same to him to pay to one or to one hundred; that at that time, the total amount of the rents was two hundred *pesos* per month, and that it never was more, but that at first, it was one hundred and fifty *pesos*, afterwards one hundred and seventy five, and in the year 1881 it began to be two hundred; that all of the above appears from his books; that he paid for six years to all of the said lessors, and that
96 it seems to him that in the year 1887 they were not satisfied with the rents, and insisted on it that the witness should buy, and when he bought, he did no longer pay any rents; that during the nine months that he was paying to Jobo Lopez as representative of the partnership, none of the other persons claimed anything from him; that Doña Marcelina Rosaly never spoke to him about the property; that he asked why she signed the lease, and they told him that it was because they were partners and to avoid any difference, the manager made them sign; that the only one known to him, with whom he dealt, was Jobo Lopez, that he did not know Doña Marcelina; that the ladies were required to sign the said contract of lease made in 1880 as a better guaranty for the manager; that on account of the insistence of the owners of the interests who threatened him to discontinue the lease, he was compelled to buy as he could, as he had invested a great sum therein; that in order to get rid of said people, Don Pedro Simón Battistini bought for the witness the interests of the three children of Jobo Lopez, because he had no money; that afterwards, Battistini made a private conveyance thereof to the witness; that Don Francisco Parra bought also for the witness the interest belonging to the daughter of Doña Marcelina named Luisa Rabainne y Rosaly; that said gentlemen held the title

as security until the witness could pay them; that the witness bought directly the last interest which belonged to the Bocanegra people;
that he bought from the said three persons the same per-
97 centage as he paid for the rents; that he bought from them
the hundred parts of the unity; that he bought from the Bocanegra people 20.34%; that said interest belonged to the children and the father or tutor made the sale, duly authorized by the court; that he did not buy any interest from Doña Marcelina Rosaly because she did not offer him any; that he did not buy from her, because she had nothing and that if she had had any interest therein, she would have offered the same; that he knows that Doña Marcelina Rosaly had no interest in the property in question, because Jobo Lopez and Don Francisco Parra told him so, and, besides, he saw the books at Don Francisco Parra's, and saw the different amounts assigned to each one, and compared them so as to ascertain the percentage, and that he saw the account of Doña Marcelina and saw that she owed a certain amount to the firm; charged with the liquidation of the former partnership that the books that he saw at Parra's were those of M. Rabainne é Hijos, and that he saw the amounts belonging to each one; that he has taken steps to find the books of M. Rabainne é Hijos; that he consulted everything with Don Francisco Parra; that Parra told him that he could buy without any fear, and assured him the same thing with regard to Doña Marcelina, that she had no right to anything; that after Don Francisco Parra had bought for the witness the interest belonging to Luisa Rabainne, when the witness tried to buy the interest of the
Bocanegra people, as he found that he had no money, he
98 requested Don Francisco Parra to give it to him, who required him to constitute a mortgage upon the property, but the witness answered that he could not mortgage the property because he had not the ownership thereof, and Parra told him then, that he would buy, and that afterwards, the proceedings to obtain a title of possession would be instituted so that he could constitute the mortgage and that a few months after the witness Graham had the title of possession registered, he then constituted the mortgage in favor of Parra, by a deed executed on the 20th of September, 1894; that when the witness rented the property and black-smith shop in question, there was nothing therein in the lines of engineering and foundry work, that he has expended eighty thousand *pesos*, which constituted the earnings in his work as Engineer fitting up machinery throughout the islands; that they leased the place to him because they could not compete with him; that they could not do any business with the stock they had therein, because there was competition and they had to fit the shop so as to meet the same; that forty thousand *pesos* were expended during the first four years; that he acknowledges the signature of Jobo Lopez appearing on a promissory note signed by the latter in favor of Don Pedro José Valls, but he says that he does not know the signature of the latter, although he believes that the signature appearing on said document is his signature; he acknowledges the receipts signed by Hortensia Rabainne y Bocanegra as the ones which the latter

gave to him; that he does not remember which was the
99 amount of rents paid by them in the year 1886, but that during the last years they paid two hundred *pesos* per month; that during some time, the date of which he does not remember, the rents were reduced to one half thereof, on account of the poor business that he was doing, which appears from his books.—Being cross-examined by the plaintiff, he answered and said: that when he rented in the year 1880, the lease covered the machinery, buildings and lot; but certain goods referred to in the second clause of the contract were delivered to him for sale on commission, and that he bought said goods from the owners after the making of said lease; that he bought said goods from Schulze, for the part belonging to his wife Luisa Rabainne, from the Bocanegra people, and from the three children of Jobo Lopez; that he did not buy any part from Doña Marcelina because she had no participation in said goods; that when Doña Marcelina learned about the sale of said goods she came to the witness and told him that she had a part in said goods and the witness answered that if she proved it, he had no objection in paying her; that he never paid any rents to Doña Marcelina; that as the plaintiff collected the rents belonging to her daughter, the witness believes that when she signed the letter, after the year 1880, authorizing him to retain certain amounts of the rents to pay some interest to Valls, she did that in so far as the part belonging to her aforesaid daughter was concerned; that he offered Luisa Rabainne three thousand *pesos* for the interest belonging to her in said property; that when Mr. Battistini sold to the witness the interest which he bought
100 from the three minors Lopez he did not execute any deed or instrument of any kind, because the Registrar said that it was not necessary, that it was sufficient for Battistini to appear and state that he conveyed the same to the witness; that the sale from Battistini to the witness was a parol sale; that when he instituted the proceedings to obtain a title of possession he had a subpœna issued to Parra, because the latter had acquired the interest belonging to Luisa, another subpœna to Battistini, because he had acquired the interest of the children of Jobo Lopez, and another to Telesforo Bocanegra, because he had sold to the witness the interest belonging to the minors Bocanegra; that he does not know who made the service of said citations; that when he rented in the year 1880, he believed that he was renting from a partnership named "Successors of M. Rabainne é Hijos," and not from those who signed the contract, in their own right.

Cross-examined as follows: And did the witness see the name of that partnership written on the books? Were they books of Successors of M. Rabainne é Hijos, or what were they? He answered: I do not remember; that the managing partner of that firm was Jobo Lopez; that he does not know why Jobo Lopez, being the managing partner, signed the lease as tutor of his minor children and not as such manager, because he did not ask him. Cross-examined: Then, if such is the case, did you make a mistake by believing that he was the managing partner? Answered: I do not know whether

I was mistaken. I still believe that he was; that he paid
101 said rents to the aforesaid different persons, and not to Doña Marcelina, following instructions received from Jobo Lopez, whose powers were publicly and apparently known, and had exercised such powers for many years prior thereto, and in whatever business he had with me, I dealt with him, and not with the others; that the purchase made from Telesforo Bocanegra was in behalf of his children because the partnership had been already liquidated, and each one was owner of his own share; that when he bought, the firm Successors of M. Rabainne é Hijos had been liquidated, and that he bought the interest belonging to each one as shown in said liquidation; that Messrs. Parra and Battistini bought from those who were then owners of the property; that by virtue of the liquidation of M. Rabainne é Hijos, each one acquired what belonged to him; that he thinks that the three minors Lopez were not members of that partnership, that Jobo was the member, and that afterwards his children would inherit from him or his wife; that when Battistini bought for the witness the interest of the Lopez people, the witness did not pay him any interest on the sum invested by said Battistini; that some time afterwards he made the parol purchase from Battistini; that when he bought from Battistini the interest belonging to the Lopez people, he did not pay him any interest whatever, because Battistini did that as a favor to him; that he remembers to have testified in the Federal Court in a suit brought by Bernardo and Hortensia Bocanegra against the witness, but he does not remember what was his testimony.

102 (*d*) The witness RAFAEL QUIÑONES, duly sworn, testified: that he is clerk of notarial offices; that he has been commissioned for the search of all the papers connected with this matter; that he wrote to Aguadilla to find out if there was any document there; that in the search which he made, he found the dissolution of M. Rabainne é Hijo of 1870, constituted by Don Mateo and Don Luis Rabainne; that afterwards he found a deed of dissolution of the partnership, which is that involving the partition of the properties of Doña Bernardina Franco, executed in 1876 containing the liquidation, valuation, adjudication, etc. and the proceedings showing the approval thereof; that he has not found any deed executed after the year 1876, entitled "dissolution of the partnership M. Rabainne é Hijos"; that he has read that deed of partition of the properties belonging to Doña Bernardina Franco of the year 1876.

(*e*) The witness ROBERT A. MILLER, duly sworn, testified: that he acknowledges the record of the testimony given before him as master in Equity, in the suit brought by Bocanegra against Roberto Graham, in the Federal Court; that in that suit, the books of M. Rabainne é Hijo were delivered to him, as such Master; that he supposes that Bocanegra produced the same; that he supposes that he returned them also to Mr. Bocanegra, but he is not sure of it; that about five or six months ago, counsel for the defendant Graham, called on the witness, in his office, inquiring about said books.

Cross-examined by the plaintiff, he answered and said: that
103 he is sure that the persons who withdrew the books from his office was a man, and that he is equally sure that it was *not* a woman who withdrew the same from the office; that he is sure that it was not the plaintiff Doña Marcelina Rosaly who took or withdrew said books from his office; that he does not remember whether the words "books of Rabainne é Hijos, produced" which appear on the testimony of Doña Marcelina given before the witness as Master in Equity, mean that it was Doña Marcelina or one of the parties to that suit, who produced the said books, but that Doña Marcelina was not a party to the suit brought against Graham in the Federal Court; that he remembers that there were five or six books of accounts of regular sizes; that he does not remember whether there was any book entitled of current accounts, among the same.

(*f*) The witness Mrs. ROBERTO GRAHAM, duly sworn, testified: that she is the wife of the defendant Roberto Graham; that she has known Doña Marcelina Rosaly for many years; that she was not her friend; that many years ago Marcelina went to the house of the witness on several occasions to request the witness to sing at a special worship and mass dedicated to the *Virgen del Carmen;* that this happened before and after the purchase made by Mr. Graham of the building and lot whereon the black-smith shop is situated; that on such occasions, she requested the witness to use her influence with her husband Graham, because her family wanted to sell the black-
smith shop, and to induce her husband to buy the interest
104 which her daughter had therein; that before Mr. Graham bought the black-smith shop, she said that she had nothing therein, because she had spent a good deal of money traveling, according to what her family had told her; that afterwards she continued calling on her to request the witness to continue singing in the church; that Doña Marcelina made said statements after Graham had rented the black-smith shop, because she remembers that the latter was paying her monthly rents, which was before the purchase made by Graham. Cross-examined by the plaintiff, she said: that she does not remember whether said statements were made by Doña Marcelina before the year 1880, that she does not think that it is as long as thirty years ago; not even twenty five years ago; that Doña Marcelina told her that, because they all wanted to sell, and any person may request a favor; that her husband paid her monthly rents for her daughter, that she never paid her anything. Here the defendant closed the introduction of his evidence.

Rebutting Evidence of the Plaintiff.

1. The witness PEDRO SIMÓN BATTISTINI, duly sworn, testified:— That he has known the defendant Graham for many years; that he knows the warehouse, lot and black-smith shop that Mr. Graham has now in Marina st.; that he remembers to have bought an interest in said property from three heirs who were sons of Jobo Lopez; that he sold, by parol, said interest to Mr. Graham, because they carried on a

mutual account; that Graham did not acquire said interest
105 directly from the said children Lopez, because he had no money; that the witness loaned him that money, but Graham did not pay him any interest; that he does not remember to have testified before the Master in Equity Don Robert A. Miller, in the suit brought by Bernardo and Hortensia Bocanegra against Roberto Graham, in the Federal Court; that he does not remember, to have testified in that suit, before the said Master, "that the witness gave the money in behalf of Graham to purchase the interest of the Lopez people, but charging interest thereon," that he may have said so, but he does not remember that; that he has never been in possession of said property; that he did not execute any deed of said sale in favor of Graham, because the proceedings to obtain a title of possession instituted by Graham, were referred to him, and the witness informed that it was true that he had sold him said interest; that he did not institute proceedings to obtain a title of possession, because he had bought for Graham; that he believes to have conveyed to Graham just what he had bought from the minors Lopez.—At this stage the plaintiff offered, and it was admitted in evidence, for the purpose of contradicting the credibility of this witness, by showing that he had made prior statements inconsistent with his present testimony, a certificate properly issued by the clerk of the Federal Court, marked as exhibit No. 14 of the plaintiff from which document it appears: that Don Pedro Simón Battistini testified as a witness before the Master in Equity, Robert A. Miller, in the suit brought in the Federal Court, by Bernardo and Hortensia Bocanegra against
106 Roberto Graham, about the year 1900; that in said case Mr. Battistini testified: that he had sold to Graham the interest belonging to the minors Lopez about the year 1893; that he had always been an intimate friend of Graham and so he was when he bought from the Lopez people; that the purchases which he had made from the three minors Lopez were made for him, but Graham could buy the same at any time, because it was so agreed upon; that they had not made any agreement as to the price for the second sale, that he charged interest on the money invested by him in said purchases; that when he made the purchases he made a calculation of the interest which would be due up to the time of the second sale; the interest was at the regular rate; that from the time of the purchases made from the Lopez people up to the second sale made to Graham the latter paid different amounts of interest; that after 7 years he sold to Graham at the purchase price because the latter paid him interest; that Graham paid him the interest, when he bought from the witness; that what he made in favor of Graham was not a loan, because if such had been the case he would have required a mortgage.

2. The witness AUGUSTO PASARELL RIUS, duly sworn, testified:—that he knows Doña Marcelina Rosaly very well; that Mr. Pozuelo, who was an attorney-at-law and Registrar of Property lived at Ponce; that the witness was a *procurador* (assistant counsel) in Ponce; that he remembers that the books of Mr. Rabainne é Hijos came into his

possession; that there, about the year 1886 or 1887, while the
107 witness was Acting Registrar of Ponce, he had occasion to see Mrs. Rosaly in the office of the Registrar, because she went there for the purpose of requesting Mr. Pozuelo to accept the defense of the same rights now claimed by her in this suit, for which reason about six books of the mercantile firm of Rabainne é Hijos were taken to that Office; that Mr. Pozuelo tried to make a careful examition of said books so as to ascertain what they might show in favor of Mrs. Rosaly, but he was unable to do so, for which reason two commercial experts of Ponce were employed, named Don Federico Vijas and Don José Antonio Begoña, who were for two or three months working in the office of Mr. Pozuelo for the purpose of making an examination of said books and submitting a report, that is to say, a demonstrative statement of the assets of Mrs. Rosaly; that said report was made about the years 1886 or 1887; that, afterwards, about the year 1893 or 1894 when the witness was practising as *procurador* in the Court of Ponce, Mrs. Rosaly came to see me, to charge me with the defense of that matter, and for that reason the books came into my hands, but he did not take the pains of examining the same because they were unintelligible; that he had already an idea of the examination made by the aforesaid gentlemen; that Mrs. Rosaly delivered to him also certain papers and documents, but by that time he began to feel sick, the sickness being the same which has reduced him to the condition in which he finds himself at
108 the present time, until about the year 1899, when Mrs. Rosaly decided to put the matter in charge of some one else because his illness still continued; that about the year 1900, in the month of April, the witness delivered the said books of M. Rabainne é Hijos to one Bocanegra to produce the same in the Federal Court, which at that time, began to hold sessions in this city; that he was authorized by Mrs. Rosaly to make said delivery to Bocanegra; that he did not make any examination of said books while they were in his possession, because he had formed an opinion with regard to them, inasmuch as they had been already examined by Mr. Pozuelo, and Messrs. Vijas and Begoña had made their report, which was known to the witness; that he remembers that the examination of said books was made by said gentlemen in the dining-room of the house of Mr. Pozuelo, and that the witness sometimes went there to take notes or transmit some note from Mr. Pozuelo to said experts, the witness being unable to go into details; that he cannot state specifically the balance shown by said books in favor of Doña Marcelina Rosaly; that according to what they said there, the amount involved was of some importance, thousands of *pesos* in her favor; that as they had technical knowledge, the witness and Mr. Pozuelo assisted the experts who were making the examination of the books, because the former did not know book-keeping, and that when he had said books in his possession later on, he knew that said rights existed in favor of Mrs. Rosaly, by virtue of what Mr. Pozuelo had already done in the matter, but on account of his illness he never verified the same;
109 that the balance in favor of Mrs. Rosaly was an important one as compared with what they showed in favor of the others.—

Cross-examined by the defendant, he answered and said: that everything testified to by him is known to him from statements made to him by the said two experts and by Mr. Pozuelo, and from everything that happened there, and that he has no personal knowledge thereof; that said books showed rights and assets in favor of Doña Marcelina, but he cannot determine the same; that he does not remember whether there was made in said books any liquidation of the firm M. Rabainne & Company, because he never made a minute examination thereof; that the books were old books dating from about the year 1860, but he cannot remember the dates of the last entries made therein, although he believes that they were made about the year 1860; that said books were of the black-smith shop of Rabainne; that he does not remember now to have seen the account of Doña Marcelina, nor any liquidation whatever, nor does he remember which were the last entries made in said books; that the experts said: "we believe that said rights and assets belong to Mrs. Rosaly"; that Mr. Pozuelo had that matter pending for two or three years, but he does not know why he did not carry it forward. The rebutting evidence of the plaintiff is closed with the foregoing testimony.

Further Witnesses Introduced by the Defendant.

At this stage, and after the rebutting evidence for the plaintiff had been closed, the defendant introduced, and the court admitted, against objection of counsel for the plaintiff, the following witnesses:

110 (1.) The witness PEDRO SOMOHANO duly sworn testified:—that he lives at Ponce; that he knows Doña Marcelina Rosaly, and has called on her on account of this suit, because he was commissioned by a gentleman from Ponce, who is not Mr. Graham, nor Mr. Parra, nor Mr. Tous, to see the plaintiff and tell her to give up this suit because she was going to lose it and would gain nothing, and that he went to her house and advised her to give it up; that he did not offer her any amount of money, nor was he authorized so to do; that he has not talked to the defendant with regard to this case. Cross-examined by the plaintiff, he said: that he cannot say who was the gentlemen*a* who commissioned him, as he has not been authorized to tell that; that he does not remember to have told the attorney Don José A. Poventud, in the office of the latter, that he had been commissioned therefor by Don Pedro Simón Battistini; that he never said by whom he had been commissioned to do that.

(2.) The witness AUGUSTO PASARELL RIUS, duly sworn, testified: that the assistance of the said two experts to examine the books was requested, because the witness, as well as Mr. Pozuelo, had no such knowledge in book-keeping, speaking in a technical sense, as to enable them to ascertain what the said books might show in favor — and against her; that said experts told them that there were assets in favor of Doña Marcelina Rosaly; that the said experts *told*
111 *them that there were assets in favor of Doña Marcelina Rosaly; that the said experts* were at least two months

consecutively comparing notes and taking data from the books, until they were able to make new books, so to speak; that a conclusion as to whether or not she had any assets, could not be reached from the books, for the reason that they had to take notes; that from a mere reading of the books, it did not clearly appear therefrom whether there were any rights, that such as they were kept they prejudiced the rights of said lady, but that, all the entries being compared, the actual right derived therefrom could be established, and the conclusion reached was that said lady had assets in her favor; that what he can say is that the books themselves could not show the actual state of affairs in one way or the other; that the said experts, after making a comparison of said entries, showed that said rights existed in favor of Doña Marcelina Rosaly; that the said experts were Don Federico Vijas and Don José Antonio Begoña, very competent in such matters, and that both have died; that he saw their report, but he does not know who might have the same at the present time; that he thinks that Doña Marcelina had the same once when she came to speak to the witness; that he remembers that Mr. Schulze called on several occasions on Mr. Pozuelo, and they had interviews more or less unpleasant, with regard to the rights of this lady, wherein aggressive expressions were used, and that afterwards he did not see Schulze any longer; that he remembers that Mr. Pozuelo addressed aggressive words to Mr. Schulze giving the latter to understand that he had tried to
112 prejudice the rights of his mother-in-law and that he used the word swindler; that he told Mr. Schulze that he had swindled his mother-in-law; that Pozuelo made reference also to the entries made in the books; that he supposed that the above had happened on account of the examination made of the books; that Schulze had married the daughter of Marcelina. The defendant again closed his evidence at this stage.

Further Witnesses for the Plaintiff.

At this stage the plaintiff introduced, and the Court admitted, without objection from counsel for defendant, and in rebuttal of the witnesses lately introduced by the latter, the following witnesses:

(F.) The plaintiff Doña MARCELINA ROSALY, duly sworn, testified:—that she never had any conversations with Mrs. Graham with regard to the buildings and lot now claimed by her from Don Roberto Graham; that she only talked to her when she went to see her to request her to sing at the religious festivity dedicated to the *Virgen del Carmen;* that Somohano asked her if she had any matter pending with Mr. Graham, and also asked her whether she was willing to make an amicable compromise for five thousand *pesos,* but he did not say who sent him; that she never wanted her daughter to sell the interest which the latter had in the black-smith shop. Cross-examined by the defendant, she answered and said:—Do you remember to have delivered to your attorneys the report referred

to by Mr. Pasarell? I do not know where it is.—Did you
113 have it? Everything that was said by Mr. Pasarell is true.
But did you have — before bringing this suit? What I have given is what I had. Was not the report of Begoña and Vijas among what you gave?—There is a report of Begoña and Vijas signed by both.—Did you give it to your Attorneys? It is there, among the papers.

(G.) The witness Don José A. POVENTUD, duly sworn, testified: that he is the attorney for the plaintiff; that after having brought this suit, and the witness having learned that Mr. Somohano went to make an offer to the plaintiff so that she might abandon the suit, the witness called Mr. Somohano to tell him how improper was the course followed by him in the absence of the attorneys, and that Mr. Somohano then told him that he had gone to offer a sum of money to the plaintiff so that she might abandon her suit and that he was sent by Don Pedro Simón Battistini; that he never saw the books of Rabainne, as, according to the testimony of the witnesses, they are lost; that among the papers delivered by the plaintiff there are some leaves of a book which are unintelligible, that he wishes they could find the report of Vijas and Begoña to produce the same. Cross-examined: Did you not tell Mr. Somohano, in that conversation had with him, that you knew that Doña Marcelina Rosaly appeared in said books as owing five thousand *pesos*, but that this debt was barred by the Statute of Limitations? He answered: I never saw the books, as testified to by your own witnesses, they are lost.—But do you not tell him that you knew that said lady owed
five thousand *pesos* to M. Rabainne é Hijo, and that said debt
114 was barred by the Statute of Limitations? He answered: No sir.

With this testimony the introduction of evidence was closed.

Exceptions.

The following exceptions were taken by the defendant, and allowed during the trial of the cause, to wit:

1. When the plaintiff introduced in evidence the partition of properties made in the year 1870, marked as exhibit No. 1 of the plaintiff and referred to under No. 1 of this bill, in the evidence of the plaintiff, the defendant objected to its admission, because he has the character of a *third party* in this case, and because the document was not duly registered, but only a mere notice had been taken with regard thereto. The Court admitted the said document and ordered that the same should be marked as exhibit No. 1 of the plaintiff.—The defendant then took an exception to the foregoing ruling.

2. When the witness Luisa Rabainne was testifying, whose testimony appears in this bill under the letter C, in the oral evidence of the plaintiff, counsel for the plaintiff put the following question to her: "Does the witness remember something that happened in her presence on account of this suit?" And the witness answered: "Mr.

Somohano came to my house and told my mother that if she gave him a receipt properly signed he would pay her a certain amount and the matter would be compromised, my mother had to give him a receipt and he would deliver to her a certain amount
115 of money; that he had been sent by a gentleman, but he did not mention his name." Then the defendant objected to any testimony which the witness might give with regard to Somohano, because it had not been proven that the latter had any connection whatever with Mr. Graham, and because, even accepting that Graham had made any offer of settlement to the plaintiff, such settlements cannot be the subject of proof. The witness then continued testifying: "that the above happened about four or five months ago, and that this suit was pending at that time; that Somohano made an offer of five thousand *pesos*." The court at this stage ruled that the testimony of the witness which had been objected to, should be allowed, without prejudice to direct later on that the same be stricken out from the record. To this ruling the defendant took an exception.

3. When the witness Luisa Taforó was testifying, whose testimony appears in this bill under the letter D, in the oral evidence of the plaintiff, counsel for the plaintiff put the following question to her: "Do you remember something that happened in the house of Doña Marcelina on account of this suit?" And the witness answered: "Mr. Somohano came to my house and told Doña Marcelina that a bad compromise was better than a good suit; that he would deliver to her five thousand *pesos*, if she signed a mere receipt." Then the defendant objected to the testimony of this witness alleging the same grounds that are stated in the foregoing exception No. 2.—The witness then continued testifying: "that the above happened
116 about two months ago; that it happened after this suit had been brought." The Court ruled to allow the question and answered referred to, without prejudice to direct later on that the same be stricken out from the record. To this ruling the defendant took an exception.

4. When the witness Dr. Esteban Vidal Rios was testifying, whose testimony appears in this bill under the letter E., in the oral evidence of the plaintiff, counsel for the plaintiff put to him the following question: "What would be the cost estimated by the Dr. for the walls erected on the yard, on the Southern and Western sides thereof." And the witness answered: "I have not made a careful inspection so as to ascertain the thickness of said walls and their state of preservation; now, on my way here, I have examined them." The defendant then objected to the testimony of Dr. Vidal as an expert, because it has not been shown that he is an architect or a mason, or something of the kind. The court ruled allowing the expert witness to testify. To this ruling the defendant took an exception.

5. To the same witness, Dr. Vidal, counsel for plaintiff put the following question: "By virtue of the knowledge which the witness has in these matters, what would be, in the opinion of the Dr., the estimated value given by him to the lease of the said building, de-

pendencies and lot, without the machinery, supposing that the same was to be used as a black-smith shop?" The defendant objected to the testimony of the witness upon this point, because it has
117 not been shown that he understands the iron-work business.—The court overruled the objection and the defendant took an exception to this ruling.

6. When the witness Don Pedro Simón Battistini was testifying, whose testimony had been introduced as rebutting evidence of the plaintiff, and appears in this bill under number 1, rebutting evidence of the plaintiff, counsel for the latter offered in evidence a certificate of the Clerk of the Federal Court which has been copied following the testimony of this witness, and was marked as exhibit No. 14 of the plaintiff, which certificate was introduced for the purpose of contradicting the credibility of this witness, by showing that he had made prior statements inconsistent with his present testimony. No objection was made by the defendant, but when the court admitted the document in evidence, the defendant took an exception to this ruling.

7. When the witness Don Augusto Pasarell was testifying, whose testimony had been introduced as rebutting evidence of the plaintiff, and appears in this bill under No. 2, rebutting evidence of the plaintiff, counsel for the latter put to him the following question: "In short, what did said books show in favor of the said Mrs. Rosaly?" The defendant objected to the question; the court allowed the same; and the defendant took an exception, because the same can not be considered as secondary evidence, inasmuch as Mr. Pasarell had not seen the account of Doña Marcelina, the plaintiff.

Exceptions Taken by the Plaintiff.

118 The following exceptions were taken by the plaintiff, and allowed during the trial of the cause, to wit:

1. When the witness Don Roberto Graham, introduced by the plaintiff, was testifying, whose testimony appears in this bill under the letter A, in the oral evidence of the plaintiff, the defendant cross-examined him as follows: "Did you ever pay any rents to Doña Marcelina Rosaly?". The plaintiff objected to this question, because from the contract of lease itself it appears that she made the lease to the defendant in her own right, and to admit such question would amount to allow the witness to contradict his own acts, and counsel for the plaintiff cited in support of his objection section 101 of the Law of Evidence in force.—The court overruled the objection, and the plaintiff took an exception to this ruling.

2. While the same witness referred to in the foregoing exception No. 1 was being examined, counsel for the plaintiff made a motion to the court requesting that the latter part of the testimony of the witness Graham, regarding the persons to whom he paid the rents, be stricken out from the record.—The court overruled the motion, and the plaintiff took an exception to this ruling.

3. When the defendant introduced in evidence the deed containing the contract of partnership executed on the 8th of February,

1870, whereby Doña Bernardina Franco, Doña Marcelina Rosaly and Jobo Lopez constituted a partnership, under the firm of M. Rabainne é Hijo, to exploit the iron-work business, which
119 was marked as Exhibit No. 2 of the defendant, and referred to in this bill under No. 2, evidence of the defendant, the plaintiff objected to the admission of said document, because it is irrelevant, inasmuch as the same refers to a partnership constituted by persons other than those who signed the lease in 1880; because the defendant Graham had acquired his undivided interests in the real property in question, not by purchase from former partners, but from heirs who made the conveyances by title of inheritance from the former owners, as shown by the partition proceedings of the properties, and not by the partnership deeds; because said deed was executed prior to the year 1880, wherein the defendant, being the lessee, admitted that the plaintiff was the co-owner of the property, and, therefore, he can not deny her title; and because section 28 of the Code of Commerce then in force, provided that if such partnership deeds were not recorded in the Registry of the Capital of the Province, they had no value or effect whatsoever among the members thereof. The court overruled the objection of the plaintiff and admitted the document. And the plaintiff took an exception to this ruling.

4. When the defendant introduced in evidence the deed executed on the 22nd of April, 1873, containing a contract of partnership constituted by the same persons and for the same purpose stated in the deed referred to in the foregoing exception No. 3, which document was marked as Exhibit No. 3 of the defendant, and is stated in this bill under No. 3, evidence of the defendant, counsel for the plaintiff objected to the admission of said document in evi-
120 dence, alleging the same reasons that are stated in the foregoing exception. The court overruled the objection of the plaintiff and admitted the document. And the plaintiff took an exception to this ruling.

5. When the defendant offered and introduced in evidence, the deed executed on the 7th of July, 1875, extending the time of the partnership constituted by the same persons and for the same purpose which is stated in the document referred to in the exception No. 3, which deed was marked as Exhibit No. 4 of the defendant, and is stated in this bill under No. 4, evidence of the defendant, the plaintiff objected to the admission of said deed in evidence, alleging the same reasons that are stated in said exception No. 3, and, also, because the term of the contract was extended after the expiration of the same. The court overruled the objection and admitted the document. And the plaintiff took an exception to this ruling.

6. When the defendant introduced in evidence the deed executed on the 6th of May, 1876, containing the inventory, valuation, liquidation, partition and adjudication of the properties of Bernardina Franco, which document was marked as Exhibit No. 5 of the defendant, and is stated in this bill under No. 5, evidence of the defendant, the plaintiff objected to the admission of said deed in evidence, alleging the same reasons that are stated in the exception No.

3, and, also, because it is a public instrument which has not
121 been registered in the Registry, wherein not even a notice has been taken with regard to the same.—The court admitted the document. And the plaintiff took an exception to this ruling.

7. When the witness Alfredo Dorrington was testifying, whose testimony appears in this bill under the letter A, in the oral evidence of the defendant, counsel for the latter put the following question to him: "Did you ever see the books of M. Rabainne é Hijos?". Then the plaintiff objected to the foregoing question and to the answer thereto, alleging that the books of M. Rabainne é Hijos are immaterial and irrelevant.—The court allowed the question.—And the plaintiff took an exception.

8. Counsel for the defendant put the following question to the same witness referred to in the foregoing exception No. 7: "What was the reason which moved you to see and examine the said books of M. Rabainne é Hijos?". Then counsel for plaintiff objected to the witness answering this question, for the reason that the books constituted the best evidence, and it has not been shown as yet that they are lost and that proper steps have been taken to find them.—The court allowed the question conditionally, overruling the objection.—And the plaintiff took an exception.

9. When the witness Doña Marcelina Rosaly was testifying, whose testimony appears in this bill under the letter B, in the oral evidence of the defendant, counsel for the latter put the following question to her: "Were you a member of a partnership constituted in the year 1870, under the firm of M. Rabainne é Hijo?". Then the plaintiff objected to this question for the reason that said partnership
122 has nothing to do with this suit, and because the defendant can not invoke the same, inasmuch as he did not buy interests from partners, but from co-owners.—The court allowed the question.—And the plaintiff took an exception to this ruling.

10. When the defendant introduced in evidence the deed of the 20th of January, 1880, involving the sale of a house and lot made in favor of Don Francisco Parra, to show the existence of M. Rabainne é Hijos in the year 1880, which was marked as Exhibit No. 6 of the defendant, and stated in this bill under No. 6, evidence of the defendant, the plaintiff objected to the admission thereof, because it has not been proven that said partnership of Successors of M. Rabainne é Hijos existed, and because the powers which Jobo Lopez might have had at that time to make the said sale in behalf of M. Rabainne é Hijo have not been proven.—The court admitted the deed in evidence. And the plaintiff took an exception.

11. When the defendant introduced in evidence the will made by Doña Marcelina Rosaly, on the 27th of January, 1870, marked as Exhibit No. 7 of the defendant, and stated in this bill under No. 7, evidence of the defendant, the plaintiff objected to the admission thereof because it was irrelevant, and because wills are not valid nor have any effect whatsoever until after the death of the testator. The court admitted the documents.—And the plaintiff took an exception to this ruling.

12. When the defendant offered in evidence the following: a

statement of goods delivered to Graham & Co. to sell on com-
123 mission; a statement of goods leased to Graham & Co. together with the black-smith shop; and six receipts of rents signed by Jobo Lopez, as attorney-in-fact of M. Rabainne é Hijo, to show that at that time Jobo Lopez acted as manager of the partnership, which documents have been respectively marked as Exhibits Nos. 8-9-10-11-12-13-14 and 15 of the defendant, and stated in this bill under Nos. 8, 9 and 10, evidence of the defendant, the plaintiff objected to the admission thereof because the authority by which Jobo Lopez might have had to sign as such attorney-in-fact has not been proven, because said documents were immaterial and irrelevant, and because it is stated in the contract of lease made in the year 1880, that an inventory of said goods would be made and signed by the same parties who signed said lease.—The court overruled the objections and admitted said documents.—And the plaintiff took an exception to this ruling.

13. When the witness Roberto Graham was testifying, whose testimony appears in this bill under the letter C, in the oral evidence of the defendant, counsel for the latter put the following question to him: "Did you consult Don Francisco Parra whether you could buy or not?". And the witness answered: "Yes Sir, I consulted him — everything." Then counsel for the plaintiff made a motion to the court to direct that said answer as well as so much of the testimony of this witness as concerned the statements made to him by Don Francisco Parra be stricken out from the record, because it was hearsay and irrelevant.—The court overruled the motion and the plaintiff took an exception to this ruling.

124 14. When the defendant introduced in evidence a deed executed on the 20th of September, 1894, involving the constitution of a mortgage, by the defendant, upon the property in question, in favor of Don Francisco Parra, marked as exhibit No. 27 of the defendant, and stated in this bill under No. 13, in the documentary evidence of the defendant, the plaintiff objected to the admission thereof, because it was immaterial and irrelevant to the question at issue in this suit.—The court admitted the same.—And the plaintiff took an exception to this ruling.

15. When the defendant offered and introduced in evidence a promissory note in favor of Don Pedro José Valls, marked as exhibit No. 29 of the defendant, and stated in this bill under No. 15, in the documentary evidence of the defendant, the plaintiff objected to the admission thereof for the reasons stated in the foregoing exception.—The court admitted the document.—And the plaintiff took an exception to this ruling.

16. The defendant offered in evidence six books of accounts of the firm Graham & Co., and the plaintiff objected to the admission thereof, because whatever Graham & Co. might have stated in said books can not prejudice the plaintiff, and because said evidence is irrelevant, inasmuch as it does not involve any admissions made by the plaintiff, but statements made by the defendant, which he seeks to use against the former.—The court admitted said books which were marked as exhibits Nos. from 45 to 50, of the defendant, and

stated in this bill under No. 19, in the documentary evidence
125 of the defendant.—And the plaintiff took an exception to this ruling.

17. In the course of the introduction of evidence by the defendant, counsel for the plaintiff made a motion to the court to direct that all the deeds introduced in evidence by the defendant, and all the evidence of the latter tending to establish the existence of a partnership between the plaintiff and other persons, be stricken out from the record, because said evidence is irrelevant and for other reasons stated in previous objections. The court overruled said motion. And the plaintiff took an exception to this ruling.

18. After the defendant had closed the introduction of his evidence, and the rebutting evidence of the plaintiff had been closed as well, the former introduced the witnesses Pedro Somohano, who was to testify for the first time, and Augusto Pasarell, who had already testified as a witness for the plaintiff, whose testimonies appear in this bill under Nos. 1 and 2, under the heading: "Further witnesses introduced by the defendant." But when these two latter witnesses began to testify, counsel for the plaintiff objected to the admission of their testimonies because the introduction of evidence by the defendant was closed. The court allowed them to testify, allowing also the adverse party to introduce further evidence later on, should the same see fit to do so. And the plaintiff took an exception to this ruling. This closes the present statement of Facts and Bill of Exceptions.

Ponce, June 1st, 1909.

Respectfully submitted,

JOSÉ A. POVENTUD,
H. P. LEAKE,
Attorneys for Plaintiff and Appellant.

126 *Service to the Defendant.*

We hereby accept service of the foregoing Statement of Facts and Bill of Exceptions, on this 1st of June, 1909.

FRANCO. PARRA.
JOSÉ TOUS SOTO,
Attorneys for Defendant and Appellee.

Filed this 21/6–09. J. A. Lopez Acosta, Deputy Clerk.

Approval of the Foregoing Bill of Exceptions and Statement of Facts.

I, the undersigned, appointed Judge of this Court from the first of May of this year, 1909, and successor in office of the Hon. Martin E. Gill, who ceased as a Judge of this Court from the above date, and who is, also, absent from Porto Rico, having carefully examined the foregoing Statement of Facts and Bill of Exceptions, and compared the same with the original documents (exhibits) and stenog-

rapher's notes filed in the record of this suit, do hereby certify, in accordance with the provisions of section 219 of the Code of Civil Procedure in connection with Rule 65 of the new Rules of the Supreme Court: that the said Statement of Facts and Bill of Exceptions contain a true and accurate statement of all the evidence introduced, exceptions taken, and proceedings had during the
127 trial of of this cause, in the District Court of Ponce, all the amendments offered by the defendant and appellee, and approved, having been embodied therein, and that the said Statement of Facts and Bill of Exceptions is a true and correct document, which is hereby entirely approved; and it is hereby ordered that the same be filed by the Secretary of the said District Court of Ponce, and made a part of the record of this cause.

Ponce, July 15, 1909.

CHARLES E. FOOTE,
Judge of the District Court of Ponce.

Entry of Filing.

I, the undersigned Secretary, do hereby certify: that in compliance with the foregoing order, the Statement of Facts and Bill of Exceptions above mentioned, have been filed in the Office of the Secretary of this Court, and made a part of the record of this cause.

Ponce, July 15, 1909.

S. VIVALDI PACHECO,
Secretary of the District Court of Ponce.

128 In the Supreme Court of Porto Rico.

No. 434.

MARCELINA ROSALY, Widow of Rabainne, Plaintiff and Appellant,
vs.
ROBERTO GRAHAM Y FRAZER, Defendant and Appellee.

Appeal from a Judgment Rendered by the District Court of Ponce.

Opinion of the Court Delivered by Mr. Justice DEL TORO.

SAN JUAN, PORTO RICO, *March 11th*, 1910.

The plaintiff and appellant in this case, Marcelina Rosaly, widow of Rabainne, filed a complaint in the District Court of Ponce, against Roberto Graham y Frazer, claiming a co-ownership in real property, and involving the nullity of a proceeding to obtain a title of possession and the conversion thereof into a title of ownership, as well as the nullity of an alienation of a real property held in common, and to obtain damages, alleging the following facts:

"1. That she is, and has always been, the owner, in full ownership, of an undivided interest, equivalent to the sum of $6253.67, *pesos*,

in the total value of $27443.67 *pesos*, which value was given to the following urban property, in the proceedings for partition of the estate left at the death of Don Mateo Rabainne and of Don Luis Rabainne y Franco, which have been filed and recorded in the office of Don Francisco Parra, a Notary Public of this city, on the 28th of January, 1870, to wit:—A two story wooden house, covered with shingles, with a lot well fenced, whereon there are other buildings, some of masonry, as a house or warehouse, and a foundry, and some others of wood, as a servant room, warehouse, a house for tools, and other dependencies and utensils belonging to said buildings, which are all placed on said lot, and which are designed to serve as a
129 black-smith shop, all of which is situated in the first ward of this city, fronting on Marina street, by which it is bounded on the East; on the West, by Concordia St.; on the South by another street leading to the Marina highroad; and on the North, by property belonging to Don Alejandro Bono and Belén Aponte.

2. That on the 15th of August, 1880, the firm Graham & Co., of which the defendant herein was the manager, entered into a contract of lease of said property, with the plaintiff and other co-owners thereof, for the term of four years, from which date, and by reason of said lease, the defendant herein took possession, and has been in possession, of said property, in so far as the co-ownership of the plaintiff is concerned, formerly in behalf of the firm Graham & Co., and later on, and at the present time, in his own behalf.

3. That the interest of the plaintiff, referred to in the first fact, is worth at the present time, the sum of $20,000.00.

4. That the defendant, after having acquired some of the undivided interests in said property, except the interest belonging to the plaintiff herein, applied to the extinguished court of First Instance of this city, on the 26th of April, 1894, stating that he was the owner of the whole of said property, so as to show, in a fraudulent and illegal manner and with the firm intention of depriving the plaintiff of her rights therein, the possession which he pretended to have of said property, and the aforesaid court approved the said proceedings for a possessory title, on the 21st of May, 1894, which was registered in the Registry of Property for this District, on folio 150 of book No. 78 of this Municipality, property No. 3403, first registration, under the following description:—"Urban property; a masonry warehouse of a single story and flat roof, designed to serve as a black-smith shop, fronting on Marina street of this city, marked with No. 21 of the government, with the following measures: on the front, which is on the East, 32 meters and 200 millimeters; on the South, fronting on Jobo St., 21 meters and 40 millimeters; on the North, 25 meters and 30 millimeters, and its lot, with the following measures: on the East, fronting on the said Marina St., 32 meters and 200 millimeters; on the West, the rear thereof, bounded by Concordia St., 30 meters and 920 millimeters; on the South or left side, 74 meters and 780 millimeters, bounded by Jobo St.; and on the North or right side, as one enters the premises, it forms a broken line whose measure is as follows: beginning on the East towards the West, it measures 26 meters

and 56 millimeters; then towards the North, 15 meters and 32 millimeters; then again from the East towards the West in an extension of 26 meters and 99 millimeters; then it turns to the South, 8 meters and 91 millimeters; and thence towards the West, 12 meters and 53 millimeters; being bounded by a lot of Don Roberto Graham
130 and Don José Trujillo, the latter holding in behalf of his children Doña Isabel and Don Juan Trujillo y Torruella; bounded also by another lot of Don Roberto Graham and by an urban property of Doña Carmen Molina de Torres. The superficial area of said lot measures 2740 meters and 400 millimeters, and the same is surrounded by a wall; the entry or registration of possession made with regard to said lot was converted into an entry or registration of ownership in May, 1902, which latter registration is a bar which prevents the registration of the undivided interest, hereinabove referred to, belonging to the plaintiff. This property and that which was described in the first fact of the complaint, are only one, and the same property, but it should be noted that the masonry warehouse referred to in the said fact, was built with the plaintiff's own means, and before the defendant had acquired the undivided interests above mentioned.

5. That when the defendant instituted the said proceedings to obtain a title of possession, he had, and he knew that he had written titles of ownership (proper for registration) of the interests which he had acquired, as stated in the foregoing fact; it being very easy for him to obtain such titles as they were within his reach.

6. That the defendant, as far as the rights of the plaintiff are concerned, has never possessed the whole of said real property, with good faith and by a just title.

7. That the proceeds of the said plaintiff's interest from the 15th of August 1880 to the 15th of August, 1908, aggregate $15000 *dollars*, which proceeds the plaintiff has not received up to the present time."

The answer of the defendant is substantially, as follows:

"1. Defendant denies the correlative fact of the complaint.

2. Defendant denies the correlative fact of the complaint; and in its stead, the defendant states that the lease referred to in the complaint was made by the Successors to 'M. Rabainne é Hijos,' an industrial partnership of this city, composed of Doña Marcelina Rosaly, in her own right and as curator *ad bona* of her daughter Doña Luisa Rabainne, Doña Hortensia Rabainne, and Don Jacobo Lopez, in behalf of his children, at the date stated in said complaint.

3. The defendant denies that the plaintiff has any interest whatever in the real property which is the object of this suit.

4. Defendant denies the correlative fact of the complaint.
131 5. The defendant denies the fifth fact of the complaint.
6. The defendant denies the sixth fact of the complaint.

7. The defendant denies equally the seventh fact of the complaint."

After a trial was had, the District Court held that there was absolute want of evidence on the part of the plaintiff, and, consequently,

rendered judgment on the 26th day of April, 1909, whereby the complaint was dismissed.

And from that judgment the present appeal has been taken.

The first question to be considered and decided is the following: Did the plaintiff prove her title? She alleged, as shown by the transcript made above, that she was, and has always been, the owner, in full ownership, of an undivided interest, equivalent to the sum of $6258.67, in the total value of $27443.67, which value was given to the estate left at the death of Don Mateo and Don Luis Rabainne in the partition proceedings of the said estate. The defendant denied said allegation. And the evidence shows the following:

It is true that from the testamentary proceedings of Don Mateo and Don Luis Rabainne, executed before a Notary Public and recorded in a Notarial protocol on the 28th of January, 1870, it appears that the said Messrs. Rabainne died, respectively, on the 23rd of April, 1868, and on the 8th of April, 1869; that the former left as heirs his widow, Doña Bernardina Franco, and his children Luis,
represented by his daughter Luisa Rabainne y Rosaly; Ra-
132 mona, represented by her children Jacobo, Ofelia and Hermi.ia Lopez y Rabainne; Josefa; and Hortensia; and the latter, his said daughter Luisa, and his widow, the plaintiff Marcelina Rosaly; that the properties left at their deaths were constituted by whatever interest might belong to them in the partnership M. Rabainne é Hijos; that such partnership was liquidated by a deed executed on the 19th of January, 1870, by the heirs and representatives of both persons deceased; that among the properties belonging to said partnership there were the lot and building involved in this suit, which were valued at $9108.00, and steam-engines, etc., valued at $18335.67, both items aggregating $27443.67, of which $18000 belonged to the estate of Don Mateo, and $9443.67 to that of Don Luis; and that the inheritance left by Don Luis was adjudicated as follows: to his widow Doña Marcelina Rosaly, the plaintiff, $6253.67, in partial payment of the properties brought by her into her marriage, which amounted to $19030.39, and of one half of the conjugal property belonging to her; and to his daughter Luisa $3190.00.

But the evidence shows that, although the above is true, the plaintiff contributed all the capital adjudicated to her, to the partnership which under the firm M. Rabainne é Hijos was constituted by her together with Doña Bernardina Franco, widow of Rabainne, and Don Jobo Lopez, by a public deed executed on the 8th of February, 1870. Such partnership which was to be engaged in the same line of business followed by the extinguished partnership of M. Rabainne
133 é Hijo, constituted by Don Mateo and Don Luis, was extended by public deeds executed on the 22nd of April, 1873, and the 7th of July, 1875, and no evidence has been introduced tending to show that the same has been duly and finally liquidated, there being several circumstances showing that said partnership continued, although, perhaps in an irregular manner, for several years longer.

The plaintiff claims as owner of a certain co-ownership, and the evidence shows that she contributed said co-ownership to a mercantile partnership, to the fate of which said co-ownership was subject

from that time. And the evidence shows further that a balance of said partnership having been made on the 30th of November, 1875, it appeared that the contribution of the plaintiff was reduced to $2478.52, such as is shown by the deed containing the partition proceedings of the properties left at the death of Doña Bernardina Franco, widow of Rabainne, executed before a Notary Public, on the 6th of May, 1876, by the plaintiff herself and other persons, and that there are circumstances showing that years afterwards the plaintiff was debtor of the partnership, as shown apparently by the books of the latter.

Such being the case, it follows that the first fact, which is the fundamental fact of the complaint filed in this case, has not been proven, and, consequently, that the judgment rendered by the District Court, is just and proper.

If the plaintiff has still any right upon the property
134 claimed by her, such a right must be shown by a final liquidation of the partnership, and such final liquidation was not, either alleged or proven at the trial.

This point having been settled, it is unnecessary to consider the questions so ably raised by the learned counsel for the plaintiff, with regard to the title of the defendant. But we should, and will, consider their "exceptions" saved in a "bill" which, properly settled and certified to, has been filed in this Supreme Court for the purpose of this appeal. Said exceptions reach the number 29 but they can be discussed in seven groups.

The first and second exceptions refer to the objection made by the plaintiff to the answer by the defendant of certain questions put to the latter with regard to whether or not he had made any payment of rents to Doña Marcelina Rosaly, and to what persons he had paid the rents, the grounds of the exceptions being that from the document introduced by the said plaintiff it appeared that the latter had leased the property to the defendant in her own right, and that the defendant could not attack his own acts, citing in his support sect. 101 of the Law of Evidence. It does not appear from an examination of said document that it was the plaintiff only who leased the property in question to the defendant, in the year 1880, but that in any case, said property was leased by several persons who were some times designated as "The Succession of M. Rabainne é Hijo, an industrial partnership of this city composed of the following persons:

Doña Marcelina Rosaly, widow of Don Luis Rabainne in her
135 own right and as *curator ad bona*, properly recognized as such, of her legitimate daughter Doña Luisa Rabainne, born of said marriage; Doña Hortensia Rabainne, etc.," and at other times as "The Successors to M. Rabainne é Hijo." Besides, when such questions were made, the defendant had already introduced evidence with regard to the point that the plaintiff had contributed the co-ownership claimed by her to a mercantile partnership; and taking such facts into consideration, we deem that the trial court committed no error in allowing such questions to be made and in ruling that the answers thereto should remain on record.

The exceptions Nos. 3, 4, 5, 6, 9, 10, 12 and 17 refer to the ob-

jection made by the plaintiff to the introduction of any kind of evidence tending to show the existence of the partnership M. Rabainne é Hijo. We have carefully considered all the allegations made in support of such objection, and we think that they have no legal basis whatever. Such evidence was proper not only to establish the defendant's right, but to show that the fundamental allegation of the plaintiff to the effect that she was owner in full ownership, of the interest referred to, was not true. The terms of the contract of lease above mentioned, considered alone, and in connection with the other evidence, can not have the extent given them by the plaintiff. Although the words "in her own right" appear in the said contract of lease, with reference to the plaintiff, such right is not either determined or fixed therein, and the other evidence tends to
136 show that the defendant made full payment of the rents stipulated in the contract, and that no part of such rents belonged to the plaintiff in her own right, and that the plaintiff did not claim anything but limited herself to receiving the part of rents belonging to her daughter. Besides, the fact that the contracts of partnership introduced in evidence were not registered in the General Registry of Commerce does not prevent a third person having an interest, from making use thereof. See in this connection sect. 28 of the Code of Commerce of 1829, which was the one precisely invoked by the plaintiff. In our Opinion, the trial court did not commit the errors assigned, in allowing counsel to prove the existence and the acts of a partnership to which the plaintiff contributed the capital claimed by her in this suit.

The District Court did not commit any error, either, in allowing the testimony of the witness Dorrington with regard to the examination of the books of M. Rabainne é Hijo, referred to in the exceptions 7 and 8. Taking into consideration the facts stated above, we conclude that such books were admissible in evidence, and although they constituted the best evidence, and on account of the objection of the plaintiff, it should have been shown first that they could not be produced in evidence, the fact is that the questions were allowed to be made conditionally, and that, afterwards, the disappearance of the books was proven, and, consequently, the inability to produce the same was established.

The exception No. 11 is based on that the District Court
137 committed an error in admitting as evidence the will executed by the plaintiff, on the 29th of January, 1890, inasmuch as wills are not valid, nor have any effect until after the death of the testator. This latter assertion is true, but in this case, the plaintiff's will was introduced to show only that although she had alleged in her complaint that a plain, determined and fixed right, constituting an exact portion of a certain capital, belonged to her, taking as a basis the partition proceedings of the estate left at the death of Don Mateo and Don Luis Rabainne, she had stated in her will that the properties which she possessed appeared from the books of the extinguished partnership M. Rabainne é Hijo, a clear statement of which would be made at the proper time by her daughter Luisa with the assistance of her executors. In that sense the document was

properly admissible in evidence, so much so that the party who executed the same was present and could explain the meaning of the clauses thereof.

The exceptions 13, 14 and 15 refer to acts of the defendant which it is not necessary to investigate, inasmuch as we have already held that the plaintiff having failed to prove her right, it is not necessary to investigate and discuss the right of the defendant.

The exception 18 refers to an alleged error of the trial court in allowing the testimony of certain witnesses after the introduction of evidence had been closed. It appears that after all the wit-
138 nesses for both sides had been examined, the trial judge allowed two witnesses more, introduced by the defendant, to testify, allowing also the adverse party to introduce later on any further evidence, if she chose to do so. Although this is not the regular course followed in the trial of a case, by adopting such a course in this case, the judge exercised his discretion in the matter, considering undoubtedly the circumstances concurring in the case, and it should be shown that the trial judge abused his discretion, and that a substantial right of the plaintiff had been violated, so as to reverse on that ground the judgment appealed from.

And, finally, the exception 19 is as follows:

"The lower court committed a grave error in rendering the judgment appealed from in this case, (pages 7 and 8 of the transcript) because as appears from the decision (page 6 of the transcript) which served as a basis for said judgment, some findings of said lower court are not supported in any way whatsoever by the evidence introduced, and are entirely contrary to the law and the jurisprudence applicable to the present suit."

If this Supreme Court concludes that a judgment is just and proper, it is not necessary to make reference to the grounds stated by the trial Judge in his opinion; because even if such grounds were not well established, the affirmance of the judgment would be proper, if the same is supported, as it is in this case, by the pleadings and the evidence, and by the facts and the law.

The appeal should be dismissed and the judgment affirmed.

EMILIO DEL TORO,
Associate Justice.

139 In the Supreme Court of Porto Rico.

No. 434.

MARCELINA ROSALY, Widow of Rabainne, Plaintiff and Appellant,
vs.
ROBERTO GRAHAM Y FRAZER, Defendant and Appellee.

Appeal from a Judgment Rendered by the District Court of Ponce.

Judgment.

SAN JUAN, PORTO RICO, *March 11th*, 1910.

This Court has carefully examined the transcript of record filed in this case and considered the briefs and arguments of counsel for

both sides, and for the reasons given in the Opinion filed herewith, the Court decides to dismiss the appeal and to affirm the judgment appealed from, rendered by the District Court of Ponce on the 26th of April, 1909. And it is hereby ordered that a certified copy of this judgment and of the Opinion referred to be transmitted to the said District Court for the information thereof and proper action.

Thus, we pronounce, command and sign.

JOSÉ C. HERNANDEZ.
JOSÉ MA. FIGUERAS.
ADOLPH G. WOLF.
J. H. MacLEARY.
EMILIO DEL TORO.

140 In the Supreme Court of Porto Rico.

No. 434.

MARCELINA ROSALY, Widow of Rabainne, Plaintiff and Appellant,
vs.
ROBERTO GRAHAM Y FRAZER, Defendant and Appellee.

Appeal from a Judgment Rendered by the District Court of Ponce.

Notice of Appeal.

Now comes the plaintiff and appellant in the above entitled cause, by José A. Poventud, H. P. Leake and Horacio Belaval, her counsel, and respectfully states:

That she takes an appeal to the Supreme Court of the United States, from the judgment rendered by this Court on the 11th of March, 1910, and, therefore, prays this Court to fix the amount of the bond to be executed to answer for all costs which may be caused the adverse party by virtue of this appeal, and to allow a term of sixty days for the translation and preparation of the record.

Ponce, P. R. April 4, 1910.

H. P. LEAKE,
J. A. POVENTUD,
H. S. BELAVAL,
Attorneys for Plaintiff and Appellant.

141 In the Supreme Court of Porto Rico.

No. 434.

MARCELINA ROSALY, Widow of Rabainne, Plaintiff and Appellant,

vs.

ROBERTO GRAHAM Y FRAZER, Defendant and Appellee.

Appeal from a Judgment Rendered by the Supreme Court of Porto Rico.

Assignment of Errors.

Now comes Doña Marcelina Rosaly, plaintiff and appellant in the above entitled cause, by the undersigned counsel, and respectfully states:

That in the record and proceedings, and in the opinion and judgment rendered by the Supreme Court of Porto Rico, in the above entitled case, the following errors assigned, occurred, to wit:

First. The said Supreme Court of Porto Rico erred in overruling the first exception contained in a Bill of Exceptions taken by the plaintiff and appellant in said cause which was duly settled and certified to by the Judge of the District Court for the Judicial District of Ponce, which first exception reads as follows: 1.—When the witness Don Roberto Graham, introduced by the plaintiff, was testifying, whose testimony appears in this bill under the letter A, in the oral evidence of the plaintiff, the defendant cross-examined him as follows: "Did you ever pay any rents to Doña Marcelina Rosaly?"

142 The plaintiff objected to this question, because from the contract of lease itself it appears that she made the lease to the defendant in her own right, and to admit such question would amount to allow the witness to contradict his own acts, and counsel for the plaintiff cited in support of his objection section 101 of the Law of Evidence in force.—The court overruled the objection, and the plaintiff took an exception to this ruling.

Second. The said Supreme Court of Porto Rico erred in overruling the second exception contained in said Bill of Exceptions of the plaintiff and appellant, which second exception is as follows:—2.—While the same witness referred to in the foregoing exception No. 1 was being examined, counsel for the plaintiff made a motion to the court requesting that the latter part of the testimony of the witness Graham, regarding the persons to whom he paid the rents, be stricken out from the record.—The court overruled the motion, and the plaintiff took an exception to this ruling.

Third. The said Supreme Court of Porto Rico erred in overruling the third exception contained in said Bill of Exceptions of the plaintiff and appellant, which third exception is as follows: 3.—When the defendant introduced in evidence the deed containing the contract of partnership executed on the 8th of February 1870, whereby Doña Bernardina Franco, Doña Marcelina Rosaly and Jobo Lopez

constituted a partnership, under the firm of M. Rabainne é Hijo, to exploit the iron-work business, which was marked as exhibit No. 2 of the defendant, and referred to in this bill under No. 2,
143 evidence of the defendant, the plaintiff objected to the admission of said document, because it is irrelevant, inasmuch as the same refers to a partnership constituted by persons other than those who signed the lease in 1880; because the defendant Graham had acquired his undivided interests in the real property in question, not by purchase from former partners, but from heirs who made the conveyances by title of inheritance from the former owners, as shown by the partition proceedings of the properties, and not by the partnership deeds; because said deed was executed prior to the year 1880, wherein the defendant, being the lessee, admitted that the plaintiff was the co-owner of the property, and, therefore, he can not deny her title; and because section 28 of the Code of Commerce then in force, provided that if such partnership deeds were not recorded in the Registry of the Capital of the Province, they had no value or effect whatsoever among the members thereof. The court overruled the objection of the plaintiff and admitted the document. And the plaintiff took an exception to this ruling.

Fourth. The said Supreme Court of Porto Rico erred in overruling the fourth exception contained in said Bill of Exceptions of the plaintiff and appellant herein, the said fourth exception being as follows:—4.—When the defendant introduced in evidence the deed executed on the 22nd of April, 1873, containing a contract of partnership constituted by the same persons and for the same
144 purpose stated in the deed referred to in the foregoing exception No. 3, which document was marked as exhibit No. 3 of the defendant, and is stated in this bill under No. 3, evidence of the defendant, counsel for the plaintiff objected to the admission of said document in evidence, alleging the same reasons that are stated in the foregoing exception. The court overruled the objection of the plaintiff and admitted the document. And the plaintiff took an exception to this ruling.

Fifth. The said Supreme Court of Porto Rico erred in overruling the fifth exception contained in said Bill of Exceptions of the plaintiff and appellant, which fifth exception is as follows:—5.—When the defendant offered and introduced in evidence, the deed executed on the 7th of July, 1875, extending the time of the partnership constituted by the same persons and for the same purpose which is stated in the document referred to in the exception No. 3, which deed was marked as exhibit No. 4 of the defendant, and is stated in this bill under No. 4, evidence of the defendant, the plaintiff objected to the admission of said deed in evidence, alleging the same reasons that are stated in said exception No. 3, and, also, because the term of the contract was extended after the expiration of the same. The court overruled the objection and admitted the document. And the plaintiff took an exception to this ruling.

Sixth. The said Supreme Court of Porto Rico erred in overruling the sixth exception contained in said Bill of Exceptions of the plain-

tiff and appellant, which sixth exception is as follows:—
145 6.—When the defendant introduced in evidence the deed executed on the 6th of May, 1876, containing the inventory, valuation, liquidation, partition and adjudication of the properties of Bernardina Franco, which document was marked as exhibit No. 5 of the defendant, and is stated in this bill under No. 5, evidence of the defendant, the plaintiff objected to the admission of said deed in evidence, alleging the same reasons that are stated in the exception No. 3, and, also, because it is a public instrument which has not been registered in the Registry, wherein not even a notice has been taken with regard to the same.—The court admitted the document. And the plaintiff took an exception to this ruling.

Seventh. The said Supreme Court of Porto Rico erred in overruling the seventh exception contained in said Bill of Exceptions of the plaintiff and appellant, which seventh exception is as follows: 7.—When the witness Alfredo Dorrington was testifying, whose testimony appears in this bill under the letter A, in the oral evidence of the defendant, counsel for the latter put the following question to him: "Did you ever see the books of M. Rabainne é Hijos?" Then the plaintiff objected to the foregoing question and to the answer thereto, alleging that the books of M. Rabainne é Hijos are immaterial and irrelevant.—The court allowed the question. And the plaintiff took an exception.

Eighth. The said Supreme Court of Porto Rico erred in overruling the eighth exception contained in said Bill of Exceptions of the plaintiff and appellant, which eighth exception is as fol-
146 lows:—8.—Counsel for defendant put the following question to the same witness referred to in the foregoing exception No. 7: "What was the reason which moved you to see and examine the said books of M. Rabainne é Hijos?" Then counsel for plaintiff objected to the witness answering this question, for the reason that the books constituted the best evidence, and it has not been shown as yet that they are lost and that proper steps have been taken to find them.—The court allowed the question conditionally, overruling the objection.—And the plaintiff took an exception.

Ninth. The said Supreme Court of Porto Rico erred in overruling the ninth exception contained in said bill of Exceptions of the plaintiff and appellant, which ninth exception is as follows:—9.—When the witness Doña Marcelina Rosaly was testifying, whose testimony appears in this bill under the letter B, in the oral evidence of the defendant, counsel for the latter put the following question to her: "Were you a member of a partnership constituted in the year 1870, under the firm of M. Rabainne é Hijo?" Then the plaintiff objected to this question for the reason that said partnership has nothing to do with this suit, and because the defendant can not invoke the same, inasmuch as he did not buy interests from partners, but from co-owners.—The court allowed the question.—And the plaintiff took an exception to this ruling.

Tenth. The said Supreme Court of Porto Rico erred in overruling the tenth exception contained in said Bill of Exceptions of the plain-

tiff and appellant which tenth exception is as follows:—10.—
147 When the defendant introduced in evidence the deed of the 20th of January, 1880, involving the sale of a house and lot made in favor of Don Francisco Parra, to show the existence of M. Rabainne é Hijos in the year 1880, which was marked exhibit No. 6 of the defendant, and stated in this bill under No. 6, evidence of the defendant, the plaintiff objected to the admission thereof, because it has not been proven that said partnership of Successors of M. Rabainne é Hijos existed, and because the powers which Jobo Lopez might have had at that time to make the said sale in behalf of M. Rabainne é Hijo have not been proven.—The court admitted the deed in evidence. And the plaintiff took an exception.

Eleventh. The said Supreme Court of Porto Rico erred in overruling the eleventh exception contained in said Bill of Exceptions of the plaintiff and appellant which eleventh exception is as follows:—11.—When the defendant introduced in evidence the will made by Doña Marcelina Rosaly, on the 27th of January, 1870, marked as exhibit No. 7 of the defendant, and stated in this bill under No. 7, evidence of the defendant, the plaintiff objected to the admission thereof because it was irrelevant, and because wills are not valid nor have any effect whatsoever until after the death of the testator. The court admitted the documents.—And the plaintiff took an exception to this ruling.

Twelfth. The said Supreme Court erred in overruling the twelfth exception contained in said Bill of Exceptions of the plaintiff and appellant which twelfth exception is as follows:—12.—When
148 the defendant offered in evidence the following:—A statement of goods delivered to Graham & Co. to sell on commission; a statement of goods leased to Graham & Co. together with the black-smith shop; and six receipts of rents signed by Jobo Lopez, as attorney-in-fact of M. Rabainne é Hijo, to show that at that time Jobo Lopez acted as manager of the partnership, which documents have been respectively marked as exhibits Nos. 8 9-10-11-12-13-14 and 15 of the defendant, and stated in this bill under Nos. 8, 9 and 10, evidence of the defendant, the plaintiff objected to admission thereof because the authority which Jobo Lopez might have had to sign as such attorney-in-fact has not been proven, because said documents were immaterial and irrelevant, and because it is stated in the contract of lease made in the year 1880, that an inventory of said goods would be made and signed by the same parties who signed said lease.—The court overruled the objections and admitted said documents.—And the plaintiff took an exception to this ruling.

Thirteenth. The said Supreme Court of Porto Rico erred in refusing to consider and decide the thirteenth exception contained in said Bill of Exceptions of the plaintiff and appellant, that is to say, the said Supreme Court of Porto Rico erred in overruling the said exception by not discussing the same, which exception thirteenth is as follows:—13.—When the witness Roberto Grahan was testifying, whose testimony appears in this bill under the letter C, in the oral evidence of the defendant, counsel for the latter put the following

question to him: "Did you consult Don Francisco Parra
149 whether you could buy or not?". And the witness answered: "Yes Sir, I consulted him everything." Then counsel for the plaintiff made a motion to the court to direct that said answer as well as so much of the testimony of this witness as concerned the statements made to him by Don Francisco Parra be stricken out from the record, because it was hearsay and irrelevant.—The court overruled the motion and the plaintiff took an exception to this ruling.

Fourteenth. The said Supreme Court of Porto Rico erred in refusing to consider and decide the fourteenth exception contained in said Bill of Exceptions of the plaintiff and appellant, that is to say, the said Supreme Court of Porto Rico erred in overruling the said exception by not discussing the same, which exception fourteenth is as follows:—14.—When the defendant introduced in evidence a deed executed on the 20th of September, 1894, involving the constitution of a mortgage, by the defendant, upon the property in question, in favor of Don Francisco Parra, marked as Exhibit No. 27 of the defendant, and stated in this bill under No. 13, in the documentary evidence of the defendant, the plaintiff objected to the admission thereof, because it was immaterial and irrelevant to the question at issue in this suit.—The court admitted the same.—And the plaintiff took an exception to this ruling.

Fifteenth. The said Supreme Court of Porto Rico erred in refusing to consider and decide the fifteenth exception contained
150 in said Bill of Exceptions of the plaintiff and appellant, that is to say, the said Supreme Court of Porto Rico erred in overruling the said exception by not discussing the same, which exception fifteenth is as follows:—15.—When the defendant offered and introduced in evidence a promissory note in favor of Don Pedro José Valls, marked as Exhibit No. 29 of the defendant, and stated in this bill under No. 15, in the documentary evidence of the defendant, the plaintiff objected to the admission thereof for the reasons stated in the foregoing exception.—The court admitted the document.—And the plaintiff took an exception to this ruling.

Sixteenth. The said Supreme Court of Porto Rico erred in refusing to consider and decide the sixteenth exception contained in said Bill of Exceptions of the plaintiff and appellant, that is to say, the said Supreme Court of Porto Rico erred in overruling the said exception by not discussing the same, which exception sixteenth is as follows:—16.—The defendant offered in evidence six books of accounts of the firm Graham & Co., and the plaintiff objected to the admission thereof, because whatever Graham & Co. might have stated in said books can not prejudice the plaintiff, and because said evidence is irrelevant, inasmuch as it does not involve any admissions made by the plaintiff, but statements made by the defendant, which he seeks to use against the former.—The court admitted said books which were marked as Exhibits Nos. from 45 to 50, of the defendant, and stated in this bill under No. 19, in the documentary evidence of the defendant.—And the plaintiff took an exception to this ruling.

151 *Seventeenth.* The said Supreme Court erred in overruling the seventeenth exception contained in said Bill of Exceptions of the plaintiff and appellant which seventeenth exception is as follows:—17.—In the course of the introduction of evidence by the defendant, counsel for the plaintiff made a motion to the court to direct that all the deeds introduced in evidence by the defendant, and all the evidence of the latter tending to establish the existence of a partnership between the plaintiff and other persons, be stricken out from the record, because said evidence is irrelevant and for other reasons stated in previous objections.—The court overruled said motion.—And the plaintiff took an exception to this ruling.

Eighteenth. The said Supreme Court erred in overruling the eighteenth exception contained in said Bill of Exceptions of the plaintiff and appellant, which eighteenth exception is as follows:—18.—After the defendant had closed the introduction of his evidence, and the rebutting evidence of the plaintiff had been closed as well, the former introduced the witness Pedro Somohano, who was to testify for the first time, and Augusto Pasarell, who had already testified as a witness for the plaintiff, whose testimonies appear in this bill under Nos. 1 and 2, under the heading: "Further witnesses introduced by the defendant." But when these two latter witnesses began to testify, counsel for the plaintiff objected to the admission of their testimonies because the introduction of evidence by the defendant was
152 closed.—The court allowed them to testify, allowing also the adverse party to introduce further evidence later on, should the same see fit to do so. And the plaintiff took an exception to this ruling.

Nineteenth. The Supreme Court of Porto Rico erred in holding, in the judgment rendered in this cause on the 11th of March, 1910, that the plaintiff and appellant herein contributed the capital of $6253.67, which was adjudicated to her in the deed executed on January 28th, 1870, to the partnership, which, under the firm of M. Rabainne é Hijo, was constituted by the plaintiff together with Doña Bernardina Franco, widow of Rabainne, and Don Jobo Lopez, by a public deed executed on the 8th of February, 1870.

Twentieth. The Supreme Court of Porto Rico erred in holding, in the aforesaid judgment, that the above mentioned partnership of M. Rabainne é Hijo continued, as shown by "certain circumstances, and perhaps in an irregular manner, for several years longer" after the year 1876; the decision upon this point showing that the said Supreme Court of Porto Rico took into consideration the evidence introduced by the defendant, illegally admitted, and referred to in the foregoing errors assigned under Nos. 7, 8, 9, 10, 11, 12, 15 and 16.

Twenty first. The Supreme Court of Porto Rico erred in holding, in the aforesaid judgment, that the first fact of the complaint had not been proven, inasmuch as the said first fact, as a question of law, has been established by the facts stated in the aforesaid judgment of the said Supreme Court of Porto Rico and in the Statement of Facts duly approved by the District Judge of Ponce,
153 and accepted by said Supreme Court in its judgment above mentioned.

Twenty second. The Supreme Court of Porto Rico erred in holding, in the judgment referred to, that "if the plaintiff had any right in the properties claimed by her, the same should be shown by a final liquidation of the firm M. Rabainne é Hijo, and that such liquidation has not been either alleged or proven in the trial," inasmuch as said liquidation was not necessary in this case, according to law.

Twenty third. The Supreme Court of Porto Rico erred in holding, in the said judgment, that the partnership deeds executed on the 8th of February, 1870, the 22nd of April, 1873, and on the 7th of July, 1875, referred to in the foregoing third, fourth and fifth errors assigned, were admissible in evidence against the plaintiff, although said partnership deeds had not been recorded in the General Registry of Commerce, at the Capital of the Province, as required by section 28 of the Code of Commerce of 1829, in force at the time when said partnership deeds were executed, inasmuch as it does not appear from the statement of Facts approved in this case, that the defendant was a third party who contracted with the aforesaid partnership.

Twenty fourth. The Supreme Court of Porto Rico erred in not holding, in said judgment, that the lease of the urban property in question, was made on the 15th of August, 1880, by the plaintiff and appellant in her own right and together with the other co-owners of the real property, and the said Court erred, further, in not holding that the defendant, being a lessee with regard
154 to the plaintiff, could not deny the title of the latter; and said Court further erred in not holding that there was, in this case, an implied renewal of the lease of said property, according to law.

Twenty fifth. The Supreme Court of Porto Rico erred in not holding, in the aforesaid judgment, that the partnerships referred to in the twenty-third error assigned, were general partnerships of profits, and that the co-ownership of the plaintiff, in the real property in question was never conveyed to the same, but only the usufruct thereof.

Twenty sixth. The Supreme Court of Porto Rico erred in not holding, in said judgment, that the titles of the defendant could be attacked by the plaintiff, and that the defendant never possessed the whole of said real estate, with a just title and in good faith, in so far as the rights of the said plaintiff are concerned; and said Court further erred in not holding that the said plaintiff had a vested right which should have prevented the title of possession of the defendant Graham, with regard to the property in question, from being converted into a title of ownership, until after the lapse of twenty years to be counted from 1894, which was the date of the approval of the proceedings instituted by the defendant to obtain a title of possession of the property in question.

Twenty seventh. The Supreme Court erred in not holding that, at all events, the plaintiff appeared to have, at least, an in-
155 terest of a 10.25% in the total value of the property in question, as shown by the said deed executed on the 6th of May,

1876, introduced by the defendant and illegally admitted in evidence; and said Court further erred in not holding that the deed which should be considered so as to determine the rights and the interest of the plaintiff in said property, was the deed containing the partition proceedings of the properties left at the deaths of Don Mateo Rabainne and Don Luis Rabainne y Franco, properly recorded on the 28th of January, 1870, in the Notarial Office of Don Francisco Parra, of this city.

Twenty eighth. The Supreme Court of Porto Rico erred in not holding that partnerships cannot be extended by the presumed or implied will of the partners; and said Court further erred in not holding that, at all events, the partnerships referred to in the twenty-third error assigned, were dissolved and liquidated by the deed of the 6th of May, 1876, illegally admitted in evidence, as stated above.

Twenty ninth. The Supreme Court of Porto Rico erred in not holding that the partnership deeds referred to in the said twenty-third error assigned were null and void and had no value or effect whatsoever among the partners.

Thirtieth. The Supreme Court of Porto Rico erred in affirming the judgment rendered in this cause by the District Court of Ponce.

Wherefore, the plaintiff and appellant prays that by virtue of the manifest errors appearing from the record, opinion and
156 judgment rendered in this cause by the said Supreme Court of Porto Rico, said judgment be reversed, and that said Court be directed to proceed to sustain all and every one of the exceptions taken by the plaintiff and to reverse the judgment rendered in this suit by the lower Insular Court.

H. S. BELAVAL,
JOSÉ A. POVENTUD,
Attorneys for the Plaintiff and Appellant.

157 In the Supreme Court of Porto Rico.

No. 434.

MARCELINA ROSALY, Widow of Rabainne, Plaintiff and Appellant,
vs.
ROBERTO GRAHAM Y FRAZER, Defendant and Appellee.

Appeal from Judgment Rendered by the District Court of Ponce.

Order.

SAN JUAN, PORTO RICO, *April 7th*, 1910.

The appeal taken by counsel Proventud, Leake and Belaval, in behalf of the plaintiff Marcelina Rosaly, to the Supreme Court of the United States, from the judgment rendered by this Court, in the above entitled case, on the 11th of March, 1910, is hereby allowed; the amount to be furnished by the appellant Rosaly, to answer for the costs, is fixed in the sum of one thousand dollars; and the term

of sixty days is granted for the translation and preparation of the record to be transmitted to the Supreme Court of the United States.

It was so agreed upon and signed by the Justices of the Supreme Court.

JOSÉ C. HERNANDEZ.
JOSÉ MA. FIGUERAS.
ADOLPH G. WOLF.
J. H. MacLEARY.
EMILIO DEL TORO.

158 In the Supreme Court of Porto Rico.

UNITED STATES OF AMERICA,
The President of the United States, ss:

Bond on Appeal to the Supreme Court of the United States.

Know all men by these presents, that We Juan Torruella y Cortada, and José S. Belaval, are held and firmly bound unto Roberto Graham y Frazer in the full and just sum of one thousand ($1000.00) dollars, to be paid to the said Roberto Graham y Frazer, his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals and dated this 12th day of April, in the year of Our Lord, One Thousand Nine Hundred and Ten.

Whereas, lately at a session of the Supreme Court of Porto Rico in a suit pending in said Court between Marcelina Rosaly, viuda de Rabainne, plaintiff, and Roberto Graham y Frazer, defendant, a judgment was rendered against the said plaintiff, and the said plaintiff having obtained an appeal to the Supreme Court of the United States to reverse the judgment in the aforesaid suit, and a citation being about to be directed to the said defendant, citing and admonishing him to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington, D. C.

159 Now, the condition of the above obligation is such that if the said Marcelina Rosaly, viuda de Rabainne, shall prosecute her appeal to effect, and answer all costs if she fails to make her plea good, then the above obligation is to be void; else, to remain in full force and virtue.

JUAN TORRUELLA CORTADA.
JOSÉ S. BELAVAL.

Reg. No. 1086.

The above instrument has been signed before me by Mr. José S. Belaval, personally known to me, this, 12th day of April, 1910.

[SEAL.] JULIO CESAR GONZALEZ,
Notary Public.

No. 377.

The above instrument has been signed before me by Mr. Juan Torruella Cortada, personally known to me, this 11th day of April, 1910.

[SEAL.] FRANCISCO G. DESCARTES,
Notary Public.

Approved this 15th day of April, 1910.
JOSÉ C. HERNANDEZ,
Chief Justice of the Supreme Court of P. R.

160 In the Supreme Court of Porto Rico.

No. 434.

MARCELINA ROSALY, Widow of Rabainne, Plaintiff and Appellant,
vs.
ROBERTO GRAHAM Y FRAZER, Defendant and Appellee.

Appeal from a Judgment Rendered by the District Court of Ponce.

Order.

SAN JUAN, PORTO RICO, *19th of May*, 1910.

As the Statement of Facts and Bill of Exceptions which was approved by the Hon. Charles E. Foote, District Judge for the Judicial District of Ponce, on the 15th of July, 1909, and which forms a part of the record on the appeal taken in the above entitled case, was the Statement of Facts and Bill of Exceptions considered and acted upon by this Court in the discussion and decision of said appeal, it is hereby ordered that the same be used as Statement of Facts and Bill of Exceptions, in this case, in the appeal taken by the plaintiff herein to the Supreme Court of the United States from the Judgment rendered by the Supreme Court of Porto Rico.

JOSÉ C. HERNANDEZ,
Chief Justice of the Supreme Court of Porto Rico.

161 The Supreme Court of the United States.

UNITED STATES OF AMERICA:

The President of the United States to Roberto Graham y Fracer and Francisco Parra, and José Tous Soto, his counsel:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington, D. C., within sixty days from the date of this Writ, pursuant to an appeal filed in the Office of the Secretary of the Supreme Court of Porto Rico, in a certain cause pend-

ing before said court, wherein Marcelina Rosaly Vda. de Rabainne, is plaintiff and appellant, and you are defendant and appellee, to show cause if any there be, why the judgment rendered against the said plaintiff and appellant, as in the said appeal mentioned, should not be reversed, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. José C. Hernandez, Chief Justice of the Supreme Court of Porto Rico, at the city of San Juan, Porto Rico, this 12th day of April in the year of Our Lord One Thousand Nine Hundred and Ten.

JOSÈ C. HERNANDEZ,
Chief Justice of the Supreme Court of Porto Rico.

[Seal Supreme Court of Porto Rico, United States of America.]

Attest:
A. F. CASTRO,
Secretary of the Supreme Court of Porto Rico.

162 *Oficina del Marshal del Tribunal Supremo de P. R.*

Recibida la presente citación en el día de hoy, queda debidamente diligenciada remitiendo copia de la misma en pliego certificado á los abogados Francisco Parra y José Tous Soto.

San Juan, P. R. 14 de Abril, 1910.

S. C. BOTHNELL, *Marshal.*

Received this writ this 14th day of April 1910 and served the same by sending by registered mail a true copy thereof to the said attorneys Francisco Parra and José Tous Soto at Ponce P. R. This at San Juan P. R. this 14th day of April 1910.

S. C. BOTHNELL, *Marshal.*

163 UNITED STATES OF AMERICA,
Island of Porto Rico:

I, Ernest Jaenecke, Interpreter and Translator of the Supreme Court of Porto Rico, do hereby certify that the foregoing is a true and faithful translation of thei respective originals, as the same appear from the record in a certain case wherein Marcelina Rosaly, widow of Rabainne, is plaintiff ans Appellant and Roberto Graham y Frazer is defendant and appellee, which cause was lately pending in said Court.

In testimony whereof I have hereunto affixed my hand, at the city of San Juan, Porto Rico, this 19th day of May, in the year of our Lord, one thousand nine hundred and ten.

E. JAENECKE,
Interpreter and Translator of the Supreme Court of Porto Rico.

164 UNITED STATES OF AMERICA,
Island of Porto Rico:

I, Antonio F. Castro, Secretary and Reporter of the Supreme Court of Porto Rico, do hereby certify and return to the claim of appeal of Marcelina Rosaly, widow of Rabainne, in a cause pending in said Court, wherein the said Marcelina Rosaly, widow of Rabainne, is plaintiff and appellant and Roberto Graham y Frazer is defendant and appellee, that the foregoing is a true copy of all papers filed and proceedings had and entered in said cause, and of the whole thereof as the same appear on file and of record in my office; and that said papers and proceedings have been faithfully and correctly translated into the English language, as shown by the certificate of the Official Interpreter and Translator of the Supreme Court of Porto Rico which forms a part of the record.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at the city of San Juan, Porto Rico, this 19th day of May, in the year of Our Lord one thousand nine hundred and ten.

[Seal Supreme Court of Porto Rico, United States of America.]

A. F. CASTRO,
Secretary and Reporter of the Supreme Court of Porto Rico.

$1 stamp. May 19th, 1910. A. F. C.

Endorsed on cover: File No. 22,205. Porto Rico Supreme Court. Term No. 584. Marcelina Rosaly, widow of Rabainne, appellant, vs. Roberto Graham y Frazer. Filed May 31st, 1910. File No. 22,205.

SUPREME COURT OF THE UNITED STATES.

October Term, 1913.

No. 64.

MARCELINA ROSALY, WIDOW of RABAINO,

APPELLANT.

vs.

ROBERTO GRAHAM Y FRAZER,

APPELLEE.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

Brief and Argument of Plaintiff and Appellant.

JACINTO TEXIDOR,

ATTORNEY FOR APPELLANT.

SAN JUAN, P. R.
Porto Rico Progress Publishing Company.
1913.

In the SUPREME COURT of the UNITED STATES.

October Term, 1911.

Marcelina Rosaly,
Widow of Rabainne,
APPELLANT.

vs.

Roberto Graham y Frazer,
APPELLEE.

No. 307.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

BRIEF AND ARGUMENT OF PLAINTIFF APPELLANT.

STATEMENT OF THE CASE.

Mrs. Marcelina Rosaly, plaintiff and appellant herein, was and is the owner of an undivided interest represented by a sum of $6,253.67, in the total value of $27,443.67, which was the value given to the urban property which is the subject of this suit and which is described in the first fact of the amended complaint (Record page 1), said value having been fixed at the partition proceedings of the properties left at the death of Mr. Mateo Rabainne and Mr. Luis Rabainne y Franco, which proceedings have been recorded in the office of Mr. Francisco Parra, a Notary of the City of Ponce, under the date of January 28th, 1870.

On the 15th of August, 1889, the plaintiff and appellant herein, in her own right and as curator ad-bona of her daughter Luisa Rabainne, together with the other co-owners of the urban property referred to, gave the same in lease to a partnership named Graham & Co., of which the defendant Roberto Graham was manager, under

the terms and conditions stated in the contract of lease. (Record page 9). The defendant and appellee, having acquired some of the undivided interest on said property, *with the exception of that belonging to the plaintiff and appellant*, filed a petition in the extinguished Court of First Instance of this City, on the 26th of April, 1894, wherein he stated that he was the owner of the entire portion of said property, when in fact he was not such owner, the purpose of which was to prove illegally and fraudulently that he had the possession thereof, and the said Court, under date of May 21st, 1894, declared the possession of said property in favor of the applicant and said possessory title was recorded in the Registry of Property in the form stated in the fourth fact of the amended complaint (Record page 2) and said record of possession was converted into a record of ownership (dominion title) in the month of May, 1902, which record of ownership prevents the plaintiff and appellant from recording her title to the undivided interest belonging to her and above referred to (Record page 9 to 14).

That when the appellee instituted the said possessory proceedings, he had and he knew that he had, titles of ownership of the different portions or interests that he had acquired, which titles could be recorded and were available for that purpose; and the said appellee has never possessed the said property in good faith and with just title in so far as the rights of the plaintiff herein are concerned, as will hereafter be shown.

The defendant and appellee denied the foregoing facts (Record page 4) and that at the trial of the case the evidence included in the Statement of Facts was introduced (Record page 7), thereupon the District Court of Ponce entered judgment on the 26th of April 1909 dismissing the amended complaint of the appellant herein. The plaintiff took an appeal from that judgment to the Supreme Court of Porto Rico, and the Statement of Facts and Bill of Exceptions having been properly filed and made a part of the record, the transcript on appeal was filed in the Hon. Supreme Court of Porto Rico at the proper time. This Court affirmed the judgment of

the District Court of Ponce, which was the trial court (Record page 70) and from said judgment of affirmance the present appeal was taken and prosecuted (Record pages 71 and 72) and afterwards the Bill of Exceptions in the case was duly approved (Record p. 81) and all other legal requisites properly complied with.

SPECIFICATION OF ERRORS.

The errors as assigned in the Record (p. 72-79) are as follows:

First: The said Supreme Court of Porto Rico erred in overruling the first exception contained in a Bill of Exceptions taken by the plaintiff and appellant in said cause which was duly settled and certified to by the Judge of the District Court for the Judicial District of Ponce, and duly settled and approved by the Porto Rico Supreme Court (Record p. 81), which first exception reads as follows: 1.—When the witness Don Roberto Graham, introduced by the plaintiff, was testifying, whose testimony appears in this bill under the letter A. in the oral evidence of the plaintiff, (Record p. 59), the defendant cross-examined him as follows: "Did you ever pay any rents to Doña Marcelina Rosaly". The plaintiff objected to this question, because from the contract of lease itself it appears that she made the lease to the defendant in her own right, and to admit such question would amount to allow the witness to contradict his own acts, and counsel for the plaintiff cited in support of his objection section 101 of the Law of Evidence in force, which is as follows:

> Sec. 101 of the Law of Evidence.
>
> The following conclusions, and no others, are deemed conclusive:
>
> 2.—The truth of the facts recited, from the recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title; but this rule does not apply to the recital of a consideration.

4.—A tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation.

The court overruled the objection, and the plaintiff took an exception to this ruling.

Second: The said Supreme Court of Porto Rico erred in overruling the second exception contained in said Bill of Exceptions of the plaintiff and appellant, which second exception is as follows:— 2.—While the same witness referred to in the foregoing exception No. 1 was being examined, counsel for the plaintiff made a motion to the court requesting that the latter part of the testimony of the witness Graham, regarding the persons to whom he paid the rents, be stricken out from the record. The court overruled the motion and the plaintiff took an exception to this ruling.

Third: The said Supreme Court of Porto Rico erred in overruling the third exception contained in said Bill of Exceptions of the plaintiff and appellant, which third exception is as follows: 3.— When the defendant introduced in evidence the deed containing the contract of partnership executed on the 8th of February, 1870, whereby Doña Bernardina Franco, Doña Marcelina Rosaly and Jobo Lopez constituted a partnership under the firm of M. Rabainne é Hijo, to exploit the iron-work business, which was marked as exhibit No. 2 of the defendant, and referred to in this bill under No. 2, evidence of the defendant, the plaintiff objected to the admission of said document, because it is irrelevant, inasmuch as the same refers to a partnership constituted by persons other than those who signed the lease in 1880; because the defendant Graham had acquired his undivided interests in the real property in question, not by purchase from former partners, but from heirs who made the conveyances by title of inheritance from the former owners, as shown by the partition proceedings of the properties, and not by the partnership deeds; because said deed was executed prior to the year 1880, wherein the defendant, being the lessee, admitted that the plaintiff was the co-owner of the property, and, therefore, he

can not deny her title; and because section 28 of the Code of Commerce then in force, provided that if such partnership deeds were not recorded in the Registry of the Capital of the Province, they had no value or effect whatsoever among the members thereof. The court overruled the objection of the plaintiff and admitted the document. And the plaintiff took an exception to this ruling.

Art. 28 of the Code of Commerce of 1829, which was then in force, being as follows:

> Art. 28. Partnership deeds not recorded in the general commercial registry shall not give rise to any action between the contracting parties to demand whatever rights may have been therein secured to them; but they shall nevertheless produce proper effects in favor of third interested persons who may have made contracts with the partnership.

Fourth: The said Supreme Court of Porto Rico erred in overruling the fourth exception contained in said Bill of Exceptions of the plaintiff and appellant herein, the said fourth exception being as follows: 4.—When the defendant introduced in evidence the deed executed on the 22nd. of April, 1873, containing a contract of partnership constituted by the same persons and for the same purpose stated in the deed referred to in the foregoing exception No. 3, which document was marked as Exhibit No. 3 of the defendant, and is stated in this bill under No. 3, evidence of the defendant, counsel for the plaintiff objected to the admission of said document in evidence, alleging the same reasons that are stated in the foregoing exception. The court overruled the objection of the plaintiff and admitted the document. And the plaintiff took an exception to this ruling.

Fifth: The said Supreme Court of Porto Rico erred in overruling the fifth exception contained in said Bill of Exceptions of the plaintiff and appellant, which fifth exception is as follows: 5.—When the defendant offered and introduced in evidence, the deed

executed on the 7th. of July, 1875, extending the time of the partnership constituted by the same persons and for the same purpose which is stated in the document referred to in the exception No. 3, which deed was marked as exhibit No. 4 of the defendant, and is stated in this bill under No. 4, evidence of the defendant, the plaintiff objected to the admission of said deed in evidence, alleging the same reasons that are stated in said excption No. 3, and, also, because the term of the contract was extended after the expiration of the same. The court overruled the objection and admitted the document. And the plaintiff took an exception to this ruling.

Sixth: The said Supreme Court of Porto Rico erred in overruling the sixth exception contained in said Bill of Exceptions of the plaintiff and appellant, which sixth exception is as follows: 6.—When the defendant introduced in evidence the deed executed on the 6th of May, 1876, containing the inventory, valuation, liquidation, partition and adjudication of the properties of Bernardina Franco, which document was marked as exhibit No. 5 of the defendant, and is stated in this bill under No 5, evidence of the defendant, the plaintiff obtected to the admission of said deed in evidence, alleging the same reasons that are stated in the exception No. 3, and, also, because it is a public instrument which has not been registered in the Registry, wherein not even a notice has been taken with regard to the same. The court admitted the document. And the plaintiff took an exception to this ruling.

Seventh: The said Supreme Court of Porto Rico erred in overruling the seventh exception contained in said Bill of Exceptions of the plaintiff and appellant, which seventh exception is as follows: 7.—When the witness Alfredo Dorrington was testifying, whose testimony appears in this bill under the letter A. in the oral evidence of the defendant, counsel for the latter put the following question to him: "Did you ever see the books of M. Rabainne é Hijos?" Then the plaintiff objected to the foregoing question and to the answer thereto, alleging that the books of M. Rabainne é Hijos are

immaterial and irrelevant. The court allowed the question. And the plaintiff took an exception.

Eighth: The said Supreme Court of Porto Rico erred in overruling the eighth exception contained in said Bill of Exceptions of the plaintiff and appellant, which eighth exception is as follows: 8.—Counsel for defendant put the following question to the same witness referred to in the foregoing exception No. 7: "What was the reason which moved you to see and examine the said books of M. Rabainne é Hijos?" Then counsel for plaintiff objected to the witness answering this question, for the reason that the books constituted the best evidence, and it has not been shown as yet that they are lost and that proper steps have been taken to find them. The court allowed the question conditionally, overruling the objection. And the plaintiff took an exception.

Ninth: The said Supreme Court of Porto Rico erred in overruling the ninth exception contained in said bill of Exceptions of the plaintiff and appellant, which ninth exception is as follows: 9.—When the witness Doña Marcelina Rosaly was testifying, whose testimony appears in this bill under the letter B, in the oral evidence of the defendant, counsel for the latter put the following question to her: "Were you a member of a partnership constituted in the year 1870, under the firm of M. Rabainne é Hijos?" Then the plaintiff objected to this question for the reason that said partnership has nothing to do with this suit, and because the defendant can not invoke the same, inasmuch as he did not buy interests from partners, but from co-owners. The Court allowed the question. And the plaintiff took an exception to this ruling.

Tenth: The said Supreme Court of Porto Rico erred in overruling the tenth exception contained in said Bill of Exceptions of the plaintiff and appellant which tenth exception is as follows: 10.—When the defendant introduced in evidence the deed of the 20th of January, 1880, involving the sale of a house and lot made in favor of Don Francisco Parra, to show the existence of M. Ra-

bainne é Hijos in the year 1880, which was marked as exhibit No. 6 of the defendant, and stated in this bill under No. 6, evidence of the defendant, the plaintiff objected to the admission thereof, because it has not been proven that said partnership of Successors of M. Rabainne é Hijos existed, and because the powers which Jobo Lopez might have had at that time to make the said sale in behalf of M. Rabainne é Hijo have not been proven. The court admitted the deed in evidence. And the plaintiff took an exception.

Eleventh: The said Supreme Court of Porto Rico erred in overruling the eleventh exception contained in said Bill of Exceptions of the plaintiff and appellant which eleventh exception is as follows: 11.—When the defendant introduced in evidence the will made by Doña Marcelina Rosaly, on the 27th of January, 1870, marked as exhibit No. 7 of the defendant, and stated in this bill under No. 7, evidence of the defendant, the plaintiff objected to the admission thereof because it was irrelevant, and because wills are not valid nor have any effect whatsoever until after the death of the testator. The court admitted the documents. And the plaintiff took an exception to this ruling.

Twelfth: The said Supreme Court of Porto Rico erred in overruling the twelfth exception contained in said Bill of Exceptions of the plaintiff and appellant which twelfth exception is as follows: 12.—When the defendant offered in evidence the following: a statement of goods delivered to Graham & Co. to sell on commission; a statement of goods leased to Graham & Co. together with the blacksmith shop; and six receipts of rents signed by Jobo Lopez, as attorney-in-fact of M. Rabainne é Hijo, to show that at that time Jobo Lopez acted as manager of the partnership, which documents have been respectively marked as exhibits Nos. 8, 9, 10, 11, 12, 13, 14, and 15 of the defendant, and stated in this bill under Nos. 8, 9, and 10, evidence of the defendant, the plaintiff objected to admission thereof because the authority which Jobo Lopez might have had to sign as such attorney-in-fact has not been proven, because said documents were immaterial and irrelevant, and because

it is stated in the contract of lease made in the year 1880, that an inventory of said goods would be made and signed by the same parties who signed said lease. The court overruled the objections and admitted said documents. And the plaintiff took an exception to this ruling.

Thirteen: The said Supreme Court of Porto Rico erred in refusing to consider and decide the thirteen exception contained in said Bill of Exceptions of the plaintiff and appellant, that is to say, the said Supreme Court of Porto Rico erred in overruling the said exception by not discussing the same, which exception thirteenth is as follows: 13.—When the witness Roberto Graham was testifying, whose testimony apears in this bill under the letter C. in the oral evidence of the defendant, counsel for the latter put the folowing question to him: "Did you consult Don Francisco Parra whether you could buy or not?" And the witness answered: "Yes, Sir, I consulted him about everything." Then counsel for the plaintiff made a motion to the court to direct that said answer as well as so much of the testimony of this witness as concerned the statements made to him by Don Francisco Parra be stricken out from the record, because it was hearsay and irrelevant. The court overruled the motion and the plaintiff took an exception to this ruling.

Fourteenth: The said Supreme Court of Porto Rico erred in refusing to consider and decide the fourteenth exception contained in said Bill of Exceptions of the plaintiff and appellant, that is to say, the said Supreme Court of Porto Rico erred in overruling the said exception by not discussing the same, which exception fourteenth is as follows: 14.—When the defendant introduced in evidence a deed executed on the 20th of September, 1894 involving the constitution of a mortgage, by the defendant, upon the property in question, in favor of Don Francisco Parra, marked as exhibit No. 27 of the defendant, and stated in this bill under No. 13, in the documentary evidence of the defendant, the plaintiff objected to the admission thereof, because it was immaterial and irrelevant to the

question at issue in this suit. The court admitted the same. And the plaintiff took an exception to this ruling.

Fifteenth: The said Supreme Court of Porto Rico erred in refusing to consider and decide the fifteenth exception contained in said Bill of Exceptions of the plaintiff and appellant, that is to say, the said Supreme Court of Porto Rico erred in overruling the said exception by not discussing the same, which exception fifteenth is as follows: 15.—When the defendant offered and introduced in evidence a promissory note in favor of Don Pedro José Valls, marked as exhibit No. 29 of the defendant, and stated in this bill under No. 15, in the documentary evidence of the defendant, the plaintiff objected to the admission thereof for the reasons stated in the foregoing exception. The court admitted the document. And the plaintiff took an exception to this ruling.

Sixteenth: The said Supreme Court of Porto Rico erred in refusing to consider and decide the sixteenth exception contained in said Bill of Exceptions of the plaintiff and appellant, that is to say, the said Supreme Court of Porto Rico erred in overruling the said exception by not discussing the same, which exception sixteenth is as follows: 16.—The defendant offered in evidence six books of accounts of the firm Graham & Co., and the plaintiff objected to the admission thereof, because whatever Graham & Co. might have stated in said books can not prejudice the plaintiff, and because said evidence is irrevelant, inasmuch as it does not involve any admissions made by the plaintiff, but statements made by the defendant, which he seeks to use against the former. The court admitted said books which were marked as exhibits Nos. 45 to 50, of the defendant, and stated in this bill under No. 19, in the documentary evidence of the defendant. And the plaintiff took an exception to this ruling.

Seventeenth: The said Supreme Court erred in overruling the seventeenth exception contained in said Bill of Exceptions of the plaintiff and appellant which seventeenth exception is as follows:

17.—In the course of the introduction of evidence by the defendant, counsel for the plaintiff made a motion to the court to direct that all the deeds introduced in evidence by the defendant, and all the evidence of the latter tending to establish the existence of a partnership between the plaintiff and other persons be stricken out from the record, because said evidence is irrelevant and for other reasons stated in previous objections. The court overruled said motion. And the plaintiff took an exception to this ruling.

Eighteenth: The said Supreme Court of Porto Rico erred in overruling the eighteenth exception contained in said Bill of exceptions of the plaintiff and appellant, which eighteenth exception is as follows: 18.—After the defendant had closed the introduction of his evidence, and the rebutting evidence of the plaintiff had been closed as well, the former introduced the witness Pedro Somohano, who was to testify for the first time, and Augusto Pasarell, who had already testified as a witness for the plaintiff, whose testimonies appear in this bill under Nos. 1 and 2, under the heading: "Further witnesses introduced by the defendant." But when these two latter witnesses began to testify, counsel for the plaintiff objected to the admission of their testimonies because the introduction of evidence by the defendant was closed. The court alowed them to testify, allowing also the adverse party to introduce further evidence later on, should the same see fit to do so. And the plaintiff took an exception to this ruling.

Nineteenth: The Supreme Court of Porto Rico erred in holding, in the judgment rendered in this cause on the 11th of March, 1910, that the plaintiff and appellant herein contributed the capital of $6,253.67, which was adjudicated to her in the deed executed on January 28th, 1870, to the partnership, which, under the firm of M. Rabainne é Hijo, was constituted by the plaintiff together with Doña Bernardina Franco, widow of Rabainne, and Don Jobo Lopez, by a public deed executed on the 8th of February, 1870.

Twentieth: The Supreme Court of Porto Rico erred in holding,

in the aforesaid judgment, that the above mentioned partnership of M. Rabainne é Hijo continued, as shown by "certain circumstances, and perhaps in an irregular manner, for several years longer" after the year 1876; the decision upon this point showing that the said Supreme Court of Porto Rico took into consideration the evidence introduced by the defendant, illegally admitted, and referred to in the foregoing errors assigned under Nos. 7, 8, 9, 10, 11, 12, 15, and 16.

Twenty first: The Supreme Court of Porto Rico erred in holding, in the aforesaid judgment, that the first fact of the complaint had not been proven, inasmuch as the said first fact, as a question of law, has been established by the fact stated in the aforesaid judgment of the said Supreme Court of Porto Rico and in the Statement of Facts duly approved by the District Judge of Ponce, and accepted by said Supreme Court in its judgment above mentioned.

Twenty second: The Supreme Court of Porto Rico erred in holding, in the judgment referred to, that "if the plaintiff had any right in the properties claimed by her, the same should be shown by a final liquidation of the firm M. Rabainne é Hijos, and that such liquidation has not been either alleged or proven in the trial," inasmuch as said liquidation was not necessary in this case, according to law.

Twenty third: The Supreme Court of Porto Rico erred in holding, in the said judgment, that the partnership deed executed on the 8th. of February, 1870, the 22nd. of April, 1873, and on the 7th. of July, 1875, referred to in the foregoing third, fourth and fifth errors assigned, were admissible in evidence against the plaintiff, although said partnership deeds had not been recorded in the General Registry of Commerce, at the Capital of the Province, as required by Section 28 of the Code of Commerce of 1829, in force at the time when said partnership deeds were executed, inasmuch as it does not appear from the Statement of Facts approved in this case, that the defendant was a third party who con-

tracted with the aforesaid partnership. Art. 28 of said Code of Commerce, applicable to this case, being as follows:

> 28.—Partnership deeds not recorded in the general commercial registry shall not give rise to any action between the contracting parties to demand whatever rights may have been therein secured to them; but they shall nevertheless produce proper effects in favor of third interested persons who may have made contracts with the partnership.

Twenty fourth: The Supreme Court of Porto Rico erred in not holding, in said judgment, that the lease of the urban property in question, was made on the 15th. of August, 1880, by the plaintiff and appellant in her own right and together with the other co-owners of the real property, and the said Court erred, further, in not holding that the defendant, being a lessee with regard to the plaintiff, could not deny the title of the latter; and said Court further erred in not holding that there was, in this case, an implied renewal of the lease of said property, according to law.

Twenty fifth: The Supreme Court of Porto Rico erred in not holding, in the aforesaid judgment, that the partnerships referred to in the twenty-third error assigned, were general partnerships of profits, and that the co-ownership of the plaintiff, in the real property in question was never conveyed to the same, but only the usufruct thereof.

Twenty sixth: The Supreme Court of Porto Rico erred in not holding, in said judgment, that the titles of the defendant could be attacked by the plaintiff, and that the defendant never possessed the whole of said real estate, with a just title and in good faith, in so far as the rights of the said plaintiff are concerned; and said Court further erred in not holding that the said plaintiff had a vested right which should have prevented the title of possession of the defendant Graham, with regard to the property in question, from being converted into a title of ownership, until after the lapse of

twenty years to be counted from 1894, which was the date of the approval of the proceedings instituted by the defendant to obtain a title of possession of the property in question.

Twenty seventh: The Supreme Court erred in not holding that at all events, the plaintiff appeared to have, at least, an interest of a 10.25% in the total value of the property in question, as shown by the said deed executed on the 6th of May, 1876, introduced by the defendant and illegally admitted in evidence; and said Court further erred in not holding that the deed which should be considered so as to determine the rights and the interest of the plaintiff in said property, was the deed containing the partition proceedings of the properties left at the death of Don Mateo Rabainne and Don Luis Rabainne y Franco, properly recorded on the 28th of January, 1880, in the Notarial Office of Don Francisco Parra, of this city.

Twenty eighth: The Supreme Court of Porto Rico erred in not holding that partnerships cannot be extended by the presumed or implied will of the partners; and said Court further erred in not holding that, at all events, the partnerships referred to in the twenty-third error assigned, were dissolved and liquidated by the deed of the 6th of May, 1876, illegally admitted in evidence, as stated above.

Twenty ninth: The Supreme Court of Porto Rico erred in not holding that the partnership deeds referred to in the said twenty-third error assigned were null and void and had no value or effect whatsoever among the partners.

Thirtieth: The Supreme Court of Porto Rico erred in affirming the judgment rendered in this cause by the District Court of Ponce.

The majority of the foregoing errors appear sufficiently argued in their respective assignments so as not to require further consideration; the remaining error will be taken up in connection with the following:

ARGUMENT AND FURTHER STATEMENT OF THE CASE

We shall begin this argument by making a brief statement regarding the persons from whom the plaintiff derives her title. Don Mateo Rabainne was the first owner of the urban property described in the first fact of the amended complaint (Record p. 1), but the establishments and ware-houses situated thereon were all made of wood up to the time of the marriage of the plaintiff and appellant to Luis Rabaine, a son of Don Mateo Rabainne, when a masonry warehouse was built with money belonging to the plaintiff and brought by her into the marriage. (Record p. 43) (Exhibit No. 1 of the plaintiff; Record p. 9).

When the plaintiff married Luis Rabaine the latter was a mere clerk in the blacksmith shop of his father Don Mateo, and both constituted a partnership about the year 1856 (Ex. No. 1 of defendant; record p. 23) the said Luis Rabainne having brought into the partnership the inheritance of Doña Marcelina, whose money was used to build the masonry building now erected thereon. (Record p. 43).

Don Mateo Rabainne was married to Doña Bernardina Franco and both had and begot the following children: Hortensia, who was a minor in the year 1870; Josefa, unmarried and of age at that time; Ramona, then deceased wife of Jacobo or Jobo Lopez, who had also three children named Ofelia, Jacobo and Hermina Lopez y Rabainne, who were minors in the year 1870; and Luis Rabainne y Franco who died on the 8th of April, 1869, (Exhibit No. 1 of plaintiff; record p. 7) and was the plaintiff's husband, from which marriage they had only a daughter named Luisa Rabainne, a minor in the year 1870.

As Don Mateo Rabainne had also died on the 23d of April, 1868, a dissolution and liquidation of the partnership M. Rabainne é Hijo took place, and a distribution of the capital and property belonging to both, the said Don Mateo and Don Luis, was also made by a deed of partition of their property, which was recorded in the Notarial

Office of Don Francisco Parra, on the 28th of January, 1870 (Ex. No. 1 of the plaintiff; record p. 7). Said deed contains a statement of the property belonging to the *blacksmith shop;* on page 15 of the transcript a reference is made to the masonry building, blacksmith shop and foundry and to the lot and machinery thereof, and on the same page, the total value of the lot, establishments and utensils is fixed in the sum of $27443.67. Other properties and accounts referred to in the aforesaid deed have no connection with the present suit.

By the said deed of January 28, 1870 (Record p. 7) and adjudication was made in favor of Doña Marcelina, in payment of the property brought by her into the marriage and of half of the conjugal property which belonged to her, and, among other properties, an undivided interest of $6253.67 was adjudicated to her, in the total value of $27443.67, which, as above mentioned, (record p. 9) was given in that year to the property, establishments, etc., described in the first fact of the amended complaint, a cautionary notice with regard to the said interest or co-ownership having been entered in the Register of Property, in favor of the plaintiff, who has been unable to finally record her title on account of the fact that the defendant Graham has recorded in his favor the entire ownership thereof (Record p. 9) although the said defendant has never acquired the said co-ownership from the plaintiff, neither in whole nor in part. (Testimony of Graham, record p. 49).

The foregoing sufficiently evinces the first fact of our amended complaint.

PLAINTIFF'S LEASE TO THE DEFENDANT.

ERROR No. 24.

On the 15th. of August, 1880, the plaintiff in her own right, and together with the other co-owners of the property referred to, leased the same to defendant Graham, for the term of four years, the latter being manager and representative of the partnership Graham & Co., and the former having contracted as co-owners of the property, and although they entitled themselves Succession of, or Successors to Rabainne é Hijo, it is a fact that Jobo Lopez, who, according to the contentions of the adverse party, was the manager of that alleged partnership, he never signed the said contract of lease with such a character, but only as legitimate father of his minor children, named Orfelia, Herminia and Jacobo, begotten in his marriage with Ramona Rabainne. (Ex. No. 2 of the plaintiff, contract of lease, record p. 9). The first fact of said contract clearly states the properties leased, that is to say, the lot, warehouse, machinery, etc. which are the same properties stated in the first fact of the amended complaint.

The defendant has admitted in the second fact of that contract of lease that although there was a partnership before that date, the year 1880, of which the plaintiff was a partner, the said alleged partnership *had been* not only dissolved but liquidated inasmuch as the said second fact contains the following statement: *"Remaining property of the liquidation of Rabainne é Hijo,"* etc. Besides, the defendant Graham knew that he had taken the property in lease from the *owners* thereof and not from a partnership, and this is shown: (1) because he did so admit in his answer under oath to the Bill in Equity filed in the Federal Court by Bernardo and Hortensia Bocanegra, on the 8th. of march, 1901 (Record p. 11); (2) because it so appears from the document it self, as stated above; (3) because the defendant, has admitted under oath, as shown by said exhibit No. 3, "that he continued in possession of said property as lessee thereof up to December 1893 at which date he bought, etc., from

several owners" (Record p. 11); (4) because the defendant admitted under oath and testified before Mr. Robert A. Miller, Master in Equity, in the Federal Court, and in the aforementioned suit of Bocanegra v. Graham: that *he leased* the property in 1880 *from the owners thereof*, and he did not mention any partnership at all; *that in the year* 1880 *the alleged partnership of the plaintiff had been dissolved;* Ex. No. 4 of the plaintiff, that he never bought anything from the plaintiff (Record p. 11); and (5) because Alfred Henry Dorrington, a witness for the defendant in the said suit heard before the Federal Court, testified therein that the business of the blacksmith shop of Graham & Co. was acquired from the *descendants of Rabainne* (Exhibit No. 5 of the plaintiff, Record p. 11.)

It is conclusively presumed that the facts stated by the parties in the contract of lease made in 1880, and specially that referring to Doña Marcelina as being a co-owner of the property, by appearing as a contracting party in her own right, are true.

> Sec. 101 of the Law of Evidence of P. R. reads:
>
> The following conclusions, and no others, are deemed conclusive:
>
> 2.—The truth of the facts recited, from the the recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title; but this rule does not apply to the recital of a consideration.

The said contract of lease shauld be construed in favor of the natural right of co-ownership of Doña Marcelina.

> Sec. 32 of the Law of Evidence of P. R. reads:
>
> When a statute or instrument is equally susceptible of two interpretations, one in favor of natural right, and the other against it, the former is to be adopted.

The defendant, being plaintiff's lessee, cannot deny the title of the latter.

Sec. 101 of the Law of Evidence of P. R. reads:

4.—A tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation.

The title of the plaintiff as co-owner in the year 1870, and by virtue of the lease, in 1880, having been once established, it is presumed that she continued being such co-owner.

Sec. 102 No. 31 of the Law of Evidence of P. R. reads:

That a thing once proved to exist continues as long as is usual with things of that nature.

An interest in realty once created is presumed to continue until removed by a conveyance or descent cast.

60 Cal. 414.

The defendant in this case still possesses the interest belonging to the plaintiff in the property referred to, only as lessee thereof, because although it is true that the contract of lease was made for the term of four years, there has been an implied new lease under Sec. 1566 of the old Civil Code. (Sec. 1469 of the Rev. Civ. Code and Law 3 tit. 10, Book 10 Novisima Recopilación).

Sec. 1469 of the Rev. Civ. Code reads as follows:

If, on the expiration of the contract, the lessee continues enjoying the thing leased for fifteen days with the acquiescence of the lessor, it shall be understood that there is an implied new lease for the time mentiond in Secs. 1480 and 1484, unless a notice has previously been given.

DEFENDANT'S POSSESSORY TITLE AND TITLES WHICH COULD BE RECORDED.

FOUTH AND FIFTH FACTS OF THE AMENDED COMPLAINT.

ERROR No. 26.

The above facts are clearly shown by the following exhibits of the plaintiff: Nos. 6, 7, 8, 9, 10, 11, 12, 13, and the rebuttal of plaintiffs number 14 which cover the following documents: a certificate of the Registry of Property (Record p. 12); a deed of sale from the minor children Bocanegra to Graham (record p. 15); a deed of sale from Luisa Rabainne to Don Francisco Parra (record p. 16); a letter from Robert Graham to Schulze, husband of Luisa Rabainne, dated October 24th, 1889 (record p. 17); cession of rights and actions from Jacobo Lopez Rabainne to Pedro S. Battistini (record p. 17); idem from Herminia Lopez to said Battistini (record p. 19); idem from Orfelia Lopez to Battistini (record p. 20); will executed by Josefa Rabainne (record p. 20); and testimony of the said Battistini in the Federal Court (record p. 52).

An examination of the above documents in connection with the testimony of the witnesses in this case, will show that, according to exhibit No. 6, (Record p. 12) the defendant Graham bought only the interest belonging to the minor children Bocanegra; that of Don Francisco Parra who in turn acquired the same from Luisa Rabainne; and the interest of Don Pedro S. Battistini, who had also acquired the interest of the minor children of Jacobo Lopez and Ramona Rabainne, named Jacobo, Herminia and Orfelia; that when the said defendant applied to the Court of first Instance in 1894 to prove the possession of the urban property in question, he stated that he lacked a written title, alleging that Messrs. Parra and Battistini had made a parole contract of sale with him (record p. 49 and 50); and it finally appears from said exhibit No. 6 that the defendant, although he was not compelled to do so, in proceedings

to show the possession and not the ownership of the property, summoned those who he said were the former owners of the property, Messrs. Bocanegra, Parra and Battistini.—Why he did not summon Doña Marcelina who was one of the persons who leased the property to him in the year 1880?—Why did the defendant acquire the interests of all the persons who signed the said contract of lease but that of the plaintiff?—Because the intention was to deprive her of her rights without her consent.

By the exhibit No. 7 of the plaintiff (record p. 15), which is the deed of sale of the minor children Bocanegra to the defendant, it is shown that said minor children sold to Graham an undetermined portion or interest in the property referred to, which they acquired as intestate inheritance from their mother Hortensia Rabainne y Franco, which undivided interest was in turn acquired by the said Hortensia Rabainne y Franco *"as inheritance from Don Mateo Rabainne and Doña Bernardina Franco"* (record p. 15), no mention whatever having been made in said deed regarding the partnership M. Rabainne é Hijo, or the alleged partnership Successors to Rabainne é Hijo, or any other partnership.

The above shows that the defendant bought the interest which such minor children had as heirs of their parents, and not their interests or rights in any partnership; and it is further shown that by virtue of said purchase, the defendant did not examine, nor did he try to examine in any manner whatsoever, the books of the old partnership M. Rabainne é Hijo.

On the other hand, the exhibit No. 9 of the plaintiff (a letter from Graham to Schulze, husband of Luisa, dated October 24, 1889, record p. 17) shows that the defendant tried to buy about that date, the interest of the said heiress Luisa, and the said defendant acknowledged in said letter that Mr. Schulze *offered to him the interest of Luisa Rabainne in the Succession of Rabainne,* and not her interest in any partnership, and Mr. Graham also stated in that letter that *no division had been made of the estate,* which plainly shows that he

never considered in any manner whatsoever the books of M. Rabainne é Hijo, which he referred to at the trial, and that he did not buy from, nor made any contract with, any partnership.

If the defendant made an offer of three thousand dollars, in the letter of October 24, 1889, for the interest of Luisa Rabainne, it is impossible to understand why he alowed Mr. Battistini to buy a short time prior thereto, the rights of the minor Lopez, when he testified at the trial that he allowed said purchase to be made because he had no money at that time, (Record 49 line 27th), nor is it possible to understand why the said defendant allowed Don Francisco Parra to purchase on the 12th of May, 1892, the aforesaid rights of Luisa Rabainne, when it is a fact that he had examined her titles thereto and had made an offer of three thousand dollars for her interest (exhibit No. 9 of the plaintiff, record page 9) and further still, when the said defendant bought in the year 1893 from Messrs. Parra and Battistini the aforesaid rights of Luisa and of the minor children Lopez, respectively. The only logical explanation which may be given of the above facts is that the defendant did not make a written contract with Messrs. Parra and Battistini so as to be able to apply, as he did later on, apply, to the Court, alleging that he lacked a written title regarding the property, and requesting that he be allowed to prove his possession of the entire property, thus depriving Doña Marcelina Rosaly of her rights and interests therein.

If the defendant had an honest purpose, why did he not record in his favor the interest acquired from the minor children Bocanegra and those acquired from Messrs. Parra and Battistini, that is to say, those of which cover the rights of the minors Lopez and Luisa Rabainne and Josefa Rabainne who had also left a will in their favor, which will, could be recorded? Exhibit No. 13 of the plaintiff, record p. 20).

He could have easily obtained from Messrs. Parra and Battistini

a deed of cession of their rights, especially if they were close friends as he testified they were.

All of the above contracts of sale were made in public documents, as shown by an examination of the record and the titles of the former owners, prior to the sales to Messrs. Graham, Parra and Battistini, appeared from public documents executed prior to the Mortgage Law, and with all the legal requirements necessary to have been recorded in the Registry of Property, at the time when the defendant instituted the proceedings to prove the possession of the entire property referrd to. (Exhibits Nos. 1, 7, 8, 10, 11, 12 and 13 of the plaintiff, and exhibit No. 5 of defendant containing the will of Doña Bernardina Franco.)

If the titles above mentioned should have been recorded in the Register, then the plaintiff's rights could not have been affected by the defendant's action, and the former would have been able to record her title in the Register at any time, instead of having obtained merely a cautionary notice with regard thereto, since the entry made in favor of Mr. Graham covered the entire property and prevented the plaintiff from recording her title.

But let us admit that the defendant lacked any title proper for registration at the time when he instituted the possessory proceedings, then, under the Law, he could have proved the possession of the property in so far as concerned the portions or interest which he had acquired, as shown by the former titles above referred to, without including therein the whole of said property, and therefore, the interest belonging to Doña Marcelina, which he did not buy, and who was not summoned or cited to appear in said proceedings. (Exhibit No. 6 of the plaintiff; record p. 12).

DECISION OF THE BOARD OF REGISTRARS OF JUNE 12, 1865.

The above decision held that an entry of possession can not be made, when the interested parties can obtain a title of ownership. Besides, there is no reasonable ground to deny a person who lacks a written title, the right to record an undivided interest in the possession of a property, when the other co-owners refuse to do so. We desire to call the attention of this Hon. Supreme Court to the fact that in the deeds of sale from the minor Lopez to Battistini and from Luisa Rabainne to Mr. Parra (Exhibits Nos. 8, 10, 11 and 12 of the plaintiff) an effort was made to determine their respective interests in the property referred to, which, although it lacks any effect whatsoever as nobody can claim to own or sell more than what the former owners had, as shown by their respective titles, which in this case were known to the defendant, (Exhibit No. 9 of the plaintiff), still this fact is worthy of notice, because the said defendant has admitted with regard to Luisa Rabainne (Ex. No. 9, record p. 17) and has testified regarding all of the former owners (Record p. 21) that no one had any affixed or determined portion in the property referred to, but only undivided interests therein. Therefore, the only thing which the defendant acquired in the purchase made directly by him, in 1893, from the minor children Bocanegra, as heirs of Hortensia Rabainne who was also heiress of Don Mateo Rabainne and Doña Bernardina Franco (Ex. No. 7 of the plaintiff; record p. 15) as well as in the other purchases which he made, were the interests of the respective vendors to be determined only upon a reference to the former titles and partition of property heretofore mentioned.

ENTRIES OF POSSESSION CONVERTED INTO ENTRIES OF OWNERSHIP, AND ENTRIES OF OWNERSHIP.

Error No. 26.

We have denied Mr. Graham's title. We have admitted its material existence, but not its legitimacy nor its legal effect, but on the contrary, we have repudiated the same and requested that it be annulled.

The adverse party openly alleged before the lower Court, that "any possessor for a period longer than six years after having recorded his possession and converted the entry of possession into an entry of ownership, had an unassailable title, which would prejudice even those who might have a better right to the ownership of the realty." To this contention we reply that under the Civil Code and Mortgage Law now in force in Porto Rico, all titles are assailable inasmuch as the record of an act or contract which is null and void according to Law, is not validated thereby, which is a provision of Sec. 33 of the Mortgage Law, which reads as follows:

> "Sec. 33.—The record of instruments or contracts which are null in accordance with the law are not validated thereby."

The conversion has no other effect than to change the entry of a mere possession into an entry of ownership; but in so far as the owner (the defendant Graham in this case) should not have alienated or encumbered the property, that is to say, should not have created rights in favor of third persons, his ownership is perfectly assailable and his title may be atacked by any one seeking to have it annulled.

Besides, the defendant proved and recorded his possession in the year 1894, and Sec. 393 of the Mortgage Law then in force provided, in the first paragraph thereof that:

"Entries of possession shall be converted into entries of ownership when they have, among others, the following requisites: that twenty years have elapsed since the date of entry."

That is to say, the plaintiff had a vested right which should have prevented the entry or possession of the defendant from being converted into an entry of ownership, until after the lapse of twenty years from 1894, which have not yet elapsed.

Later on a General Order approved by the Military Government on the 4th of April, 1889, limited to six years the period of possession necessary for the acquisition of ownership by prescription, *with a just title and in good faith*, which order was given a retroactive effect. By virtue of this General Order, which also amended the Mortgage Law, the defendant converted the entry of his possession into an entry of ownership in the year 1902, before the expiration of nine years from the date of the said entry of possession, which in so far as the rights of the plaintiff are concerned has no effect whatsoever and it is an act entirely null, and to hold otherwise would amount to a violation of the provisions of the 5th Amendment to the Constitution of the United States and of the first paragraph of the 14th Amendment thereof.

But aside from the foregoing, the defendant admitted in his brief filed in the lower Court, that when an entry of possession is converted into an entry of ownership, *a true title of ownership arises*, which admission brings the case fully within the principles established in the case of *Gonzalez* v. *The People of Porto Rico*, 3 P. R. Dec. 327-329-240.

Section 34 of the Mortgage Law, which was invoked by the defendant in the lower Court, should be construed in connection with paragraph 2 of Sec. 389 thereof, and said Sections read as follows:

Sec. 34. Notwithstanding the statements contained in the preceding article, the instruments or contracts executed or

covenanted by a person who, according to the Registry, has a right thereto, shall not be invalidated with regard to third persons, after they have once been recorded, although later the right of the person executing them is annulled or determined by virtue of a prior deed not recorded, or for reasons which do not clearly appear from the registry.

Only by virtue of a recorded instrument may another later instrument, also recorded, be invalidated to the prejudice of third persons, with the exceptions mentioned in Art. 389.

The provisions of this article may at no time be applied to the instrument recorded in accordance with the provisions of Art. 390, unless the prescription has validated or secured the interest referred to therein.

Sec. 389, paragarph 2.—Notwithstanding the provisions of the preceding paragraph, the document which has not been recorded, but which should have been, may be admitted to the prejudice of third persons, if the object of the production thereof be only to corroborate another subsequent instrument which had been recorded.

This Hon. Supreme Court should also bear in mind, that paragraph 3 of Sec. 34, which has been quoted above and paragraph 5 of Sec. 394, which reads:

The entry of possession shall not prejudice the person who has a better right to the ownership of the realty, although his title has not been recorded, unless the prescription has confirmed and secured the claim recorded. Between the parties the possession shall be effectual from the date prescribed by the common law.

as well as many other sections of the Mortgage Law, refer to the

necessity of the existence of the *prescription* in order to confirm and secure the possessory right recorded, which shows that the defendant could only invoke in this case, either the ordinary prescription after a term of possession sufficient to acquire the ownership by a just title and in good faith, or the extraordinary prescription which requires a possession of thirty years, the existence of neither of which could be proven in this case, but even if either could be proved, they could not avail the defendant for the reasons hereinafter stated.

A possessory proceeding, even after the entry of possession has been converted into an entry of ownership, can be attacked by any prejudiced person, because the same is an ex-parte procee ling, wherein an order is made which cannot prejudice any person who has not been *personally summoned* to appear therein, and which has never the character of an action or suit. 3 P. R. Dec. 536.

But again, the Supreme Court of Porto Rico held that: "in proceedings to obtain a dominion title, any interested person may appear within sixty days and oppose the application, and that *even after the dominion of ownership has been declared and recorded in favor of the applicant, as the judgments rendered in that kind of proceedings, which are in the nature of proceedings ex-parte, do not produce the effect of an executory judgment, any interested person could bring an ordinary action to annul the decision rendered in the dominion proceeding and have the ownership of the property declared in favor of such party plaintiff.*

Gonzalez v. El Pueblo de P. R. Dec. 3 of P. R. 237-239 and 240.

BAD FAITH AND UNJUST TITLE.

The allegation contained in the sixth fact of our amended complaint, to the effect that the defendant has not possessed the whole of the property in question in good faith and by a just title in so far as the rights of the plaintiff are concerned, would be immaterial,

but for the purpose of showing the bad faith of the defendant, which gives the plaintiff a right to a proportional share in the buildings erected on the property and in the improvements for luxury and pleasure, etc., *without obligation to indemnify the said defendant therefor.*

Sections 362 and 455 of the old Civil Code which are identical with Sections 371 and 457 of the Civil Code now in force, are as follows:

> Sec. 371.—He who builds, plants or sows in bad faith on another's land loses what he has built, planted or sown, without having any right to indemnity.
>
> Sec. 457.—A possessor in bad faith shall pay for the fruit collected and for those which the lawful possessor might have collected, and shall only have the right to be reimbursed for the necessary expenses incurred in the preservation of the thing. Expenses incurred in improvements for luxury and pleasure shall not be refunded to the possessor in bad faith; but he may remove the objects for which such expenses have been incurred, provided the thing suffers no injury thereby, and the lawful possesor does not prefer to retain them and pay the value they may have at the time he enters into possession.

Besides, the allegation is also material for the purpose of the claim of damages which besides rents etc., we make in the complaint, because it is well known that he who acts in such manner should be sentenced to the payment of punitive damages.

Exemplary damages are given in cases where malice, *fraud* or gros negligence enter into the cause of action.

> 76 Cal. 532; 74 Cal. 148;
> 40 Cal. 578; 14 Cal. 553;
> 131 N. Y. 590; 130 N. Y. 239;
> 165 U. S. 58; 3 Wheat. 546.

According to Sec. 1950, of the old Civil Code (Sec. 1851 of the Rev. Civ. Code), the good faith of the possessor consists in his belief that the person from whom he received the thing was the owner of the same, and could convey his title.

The defendant in this case knew perfectly well that the persons who sold their interests to him were not the owners of the entire property, and in the year 1880, when he received the property in lease, he acknowledged in writing that the plaintiff herein was a co-owner. (Exhibit No. 2 et seq. of the plaintiff; record p. 9).

The allegations heretofore made in connection with this point should also be born in mind.

In order that the requirement of *good faith*, in the possession, be of any avail, "it is necessary that posessor's good faith be based on some ground, a mere and groundless belief being not enough therefor, because, as required by the *Leyes de Partidas*, the good faith must be supported by a good reason, that is to say, a cause sufficient to produce the transmission of the ownership. If it is so understood, then it is clear that a possessor who acquired the thing possessed from a person with regard to whom he knew that he or she was not the owner (of the whole) thereof, or that he or she lacked the required capacity or power to transmit the same, cannot obtain the said thing through ordinary prescription, because according to Law he or she is, and always will be, a posessor in bad faith whatever may be the title under which he or she possesses the same." "If a just title is lacking, as, for instance, if the person from whom the possessor acquired the thing possessed, lacked power to transmit (the whole of) the same, and the possessor, after having been notified thereof, continues in the possession of the thing, then the lack of good faith will necessarily be inferred therefrom inasmuch as he could not allege the existence of any belief to support the same (the good faith)". 12 Manresa's Commentaries on the Civil Code 757-758-815 et seq.

Any person *who is aware* that there is in his title, or *in the man-*

ner of acquiring it, any flaw invalidating the same, shall be considered a possessor in bad faith.

Section 433 of the old Civil Code, which is equivalent to Sec. 436 of the Rev. Civ. Code, reads as follows:

> A bona fide possessor is deemed to be a person who is not aware that there exists in his title or in the manner of acquiring it, any flaw invalidating the same.
>
> A possessor in bad faith is deemed to be any person possessing in any case contrary to the above.

One who negligently or willfully closes his eyes *is not* a bona fide purchaser. 36 Cal. 274.

Information putting on inquiry *need not* come from a party interested. 37 Cal. 202.

And even admitting that the prescription could avail the defendant in this case, which cannot be sustained, as shown hereafter, it is nevertheless evident that the possession of the defendant in so far as the rights of the plaintiff, are concerned, has been tolerated by the latter by virtue of the lease made in 1880; said possession had at the beginning, and in so far as the plaintiff is concerned, continued to have, the character of a lease.

Acts which are merely tolerated do not affect the rights of the owner. Sec. 444 of the old Civil Code; Sect. 446 of the Rev. Civ. Cod.; Sect. 1942 of the old Civil Code; Sect. 1843 of the Rev. Civ. Code.

Each one of the participants in a thing possessed in common is considered as having exclusively possessed the part which may be allotted to him on the distribution, for the entire period during which there was no division.

Sect. 450 of the old Civil Code;

Sect. 452 of the Rev. Civ. Code.

It is presumed that the defendant is still enjoying the possession

of that property, as far as the plaintiff is concerned, in the same character of lessee in which he acquired the same from the plaintiff in the year 1880 (Exhibit No. 2 of the plaintiff; record 9), until the defendant shall have proven that he acquired the interest belonging to her.

Section 436 of the old Civil Code and Sect. 438 of the Rev. Civ. Cod. read as follows:

> It is presumed that possession, is continued under the same understanding by which it was acquired, until the contrary be proven.

For ordinary prescription of ownership, it is necessary to possess things in the capacity of an owner and in good faith and under a just title.

Sections 1940 and 1941 of the old Civil Code and Sections 1841 and 1842 of the Rev. Civ. Code read as follows:

> For ordinary prescription of ownership and other property right, it is necessary to possess things in good faith and under a proper title, during the time specified by law.
>
> Possession must be in the capacity of an owner, public, peaceful and uninterrupted.

And even admitting that the allegation of prescription could be raised in this case, we have shown that in this case all of the above requirements are lacking, because the defendant possesses in the capacity of lesee of the plaintiff. (Exhibit No. 2; record p. 9).

JUST TITLE.

By a proper title it is understood, that which legally suffices to transfer the ownership, the prescription of which is in question;

this title must be true and valid and it must be proven by the defendant because it is never presumed.

Sections 1952, 1953 and 1954 of the old Civil Code, and Sections 1853, 1854 and 1855 of the Rev. Civil Code, read as follows:

> 1853. By a proper title is understood that which legally suffices to transfer the ownership or property right, the prescription of which is in question.
>
> 1854. The title for prescription must be true and valid.
>
> 1855: A proper title must be proven; it never can be presumed.

The title must be true, because a title which does not exist at all cannot give rise to the prescription, as no juridical effects could be derived therefrom , such as happens in this case wherein the plaintiff, nor any other person on her behalf, has ever sold her interest to the defendant.

> A just title must be proven and cannot be presumed, because as it is a fact subject to the perception of the senses it is not susceptible of any supposition or presumption, and as the proof thereof is always possible, inasmuch as it is a positive fact, it is not even proper to establish in regard thereto any presumption whatever.
>
> 12 Manresa 825.

PRESCRIPTION.

The defendant in this case cannot invoke against the plaintiff's rights, neither the *ordinary prescription,* nor the *extraordinary prescription* of thirty years, Sect. 1959 of the old Civ. Co.; Sect. 1869 of the Rev. Civ. Code), which in this case has no existence at all, because not even seventeen years have elapsed, since the defendant proved his possession in the year 1893, and as we have shown, that his possession is not in good faith, and that he lacks a just title,

etc., this extraordinary prescription is the only one that he could successfully allege, in case he could show a possession for the required period of thirty years.

We sustain that the prescription cannot be invoked in this case:

1.—Because the defendant leased the property from the plaintiff in the year 1880 (Exhibit No. 2; record p. 9) and although the said contract was made for the term of four years, there has been an implied new case, in accordance with the provisions of Sec. 1566 of the old Civil Code (Sec. 1469 of the Rev. Civ. Code; Law 3 tit. 10, book 10, Nov. Rec.) from which it follows that the defendant has possessed in the capacity of a lessee as far as the plaintiff's rights are concerned.

Decisions of the Supreme Court of Spain, of
Nov. 7, 1895; Sept 29, 1877;
April 16, 1859; March 18, 1874.

2.—Because the defendant Graham having acquired the possession of said property in the year 1880, by virtue of the contract of lease above referred to, which was signed by the plaintiff in her own right as lessor thereof, the defendant cannot acquire the ownership thereof by prescription, nor deny the plaintiff's title.

Section 101 of the Law of Evidence of P. R. reads:

> 4.—A tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation.
>
> See also: 6 Cal. 197; 8 Cal. 398-584; 12 Cal. 290; 50 Cal 250.
>
> Lessee is estopped to deny landlord's title.
>
> 2. Cal. 515; 14 Pet. 156; 24 Cyc. 934.

The foundation of the estoppel is the occupation of the premises by permission of the landlord; *the estoppel is in pais and does not depend on lease,* but on possession under it, and is operative after conclusion of lease and until that possession is ended; possession under lease is admission of title in lessor.

24 Cyc. 937.

The tenant is estopped until he surrenders possession to lessor, and cannot assert title acquired during lease.

24 Cyc. 947.

A purchase from landlord's partner, cannot be set up against landlord.

74 Cal. 590.

3.—Prescription cannot be alleged in this case, because the possession of all the co-owners is presumed from the possession of either of them.

23 Cal. 247; 24 Cal. 376.

Prescription acquired by a co-proprietor or owner in common, benefits all the other.

Sect. 1933 of the old Civil Code;
Sect. 1834 of the Rev. Civil Code.

4.—Because among co-owners the action to demand the division of the thing held in common does not prescribe; and this is the action brought by the plaintiff herein.

Sect. 1965 of the old Civil Code and Sect. 1866 of the Rev. Civil Code, read as follows:

> Among coheirs, co-owners, or proprietors of adjacent estates, the action to demand the division of the inheritance, of the thing held in common, or the survey of the adjacent properties does not prescribe.

A co-owner cannot set up prescription against other co-owners.

Decisions of the Supreme Court of Spain, of
Dec. 22, 1860; Dec. 13, 1872;
Dec. 18, 1874; Feb. 16, 1878;
March 19, 1888.

5.—Because the defendant is estopped to deny his own acts, which he will do if allowed to deny the plaintiff's title, which title as co-owner and lessor in her own right was acknowledged by him in the contract of lease made in the year 1880 (Exhibit No. 2; record p. 9.)

Decisions of the Supreme Court of Spain, of Dec. 1, 1886; May 11, 1888.

6.—And prescription does not lie in this case specially because the defendant has not specifically set up the same in his answer to the complaint, but simply denied the sixth fact of our amended complaint, wherein the defendant's bad faith is alleged, but the latter did not specially claim the privilege of the supposed existence of the prescription, nor did he mention the provisions of law relied upon by the defendant to sustain that our cause of action is barred, all of which is a necessary requirement in order that the allegation of prescription may be of any avail to any litigant invoking the same. Sect. 128 of the Code of Civil Procedure.

Even a general allegation that the cause of action is barred by chapter 3, tit. 2, part 2 of the Code is insufficient. Manning v. Dallas, 73 Cal. 420.

Where the wrong sections of the Statute were referred to, it was held to have been badly pleaded. 99 Cal. 655.

It is necessary to plead the special section of the Code applicable to defendant's case. 47 Cal. 291.

For examples of insufficient pleas of the statute where defendant claims by adverse occupancy, see 31 Cal. 387; where it was held that the following plea of the statute of limitations was not a good plea: "If plaintiffs ever had any right or title to their claims, they are barred by the Statute of limitations as they, the defendants, have been in quiet and peaceable possession of the same, adversely to plaintiffs, for a priod of over five years." See also 33 Cal. 505.

In order that prescription may avail the defendant it is necessary to allege the same *specially*, either by demurrer or by answer; when the fact relied upon as a defense have the character of a special privilege, which can only avail the party pleading it, the allegations of the latter, either by demurrer or by answer, *must clearly state the facts necessary to support the same.*

Guzman v. Vidal, 2 Dec. P. R. 407-408-413.

Diaz Caneja v. Rossy, 3. Dec. P. R. 307-308.

If prescription is not set up against the complaint, the Court canot consider the same, nor discuss any error assigned as an infraction of the laws regarding the same.

Decisions of the Supreme Court of Spain, of Sept. 26, 1864; March 7, 1866.

Prescription, being a special privilege, must be alleged and invoked either by demurrer or answer, otherwise it will be deemed that the defendant waives the same.

126 Cal. 582; 125 Cal. 77;
68 Cal. 466; 68 Cal. 210;
31 Cal. 33; 23 Cal. 16;
111 La. 747-35 So. 889;
48 Pa. St. 130; 138 U. S. 623;
124 U. S. 351, 8 Sp. Ct. 510.

And it should be born in mind that in Porto Rico all kinds of prescription must be alleged in the manner required by our Code of Civil Procedure, whether the said prescription be set up to show the acquisition of ownerships by the party pleading it, or as a bar of the plaintiff's cause of action, the so-called *extinguishing prescription* being a mere term used by text-writers who have given the same a conventional meaning.

Sanchez Roman—Civil Law, Vol. 3, p. 263; 31 Cal. 387.

AMOUNT OF RENTS, PRODUCE, ETC.

It is not material for the plaintiff to determine or show the present value of the property in question, although evidence has been introduced regarding this point (Exhibits Nos. 4 and 5 of the plaintiff; record p. 11), the interest claimed in the prayer of the amended complaint referring to the actual value of said property.

In order to establish the plaintiff's allegation regarding the rents, etc. it is sufficient to make a reference to exhibit No. 2 of the plaintiff (record page 9) and to the testimony appearing on page 22 of the record, which shows that the rents of the property, excluding the machinery, should be fixed in the sum of two hundred and fifty dollars per month.

DEFENDANT'S EVIDENCE.

The defendant introduced in evidence a deed of dissolution of partnership, executed on the 19th of January, 1870, which was taken as a basis for the partition made of the properties left by Don Luis and Don Mateo Rabainne (exhibit No. 1 of the defendant and of the plaintiff; record pages 23 and 7).

Then he introduced a deed of partnership executed by Bernardina Franco, Marcelina Rosaly, and Jobo López, in the year 1870, (Exhibit No. 2 of the defendant; record p. 23) wherein the said contracting parties constituted a partnership under the firm of M. Rabainne é hijo, which, according to the third clause thereof, was to be engaged in *foundry, carpentry,* and other works of that kind; it was agreed in the first clause thereof, that the term of the partnership would expire on the 1st of December, 1871, and that Jobo Lopez was to be the manager thereof, with power to sign on behalf of the partnership; the fourth clause states that as the children of both, Don Luis and Don Mateo Rabainne, have their respective shares or interests *in the said shop,* a rent of 5% per annum thereon should

be paid out of the partnership's property; the *benefits or earnings* should be distributed among the partners, according to the sixth clause thereof; by the ninth clause Jobo Lopez was forbidden the use of the firm's name in business foreign to the partnership, and he was required to obtain the partner's consent in order to engage the partnership in business of speculating nature, or to do wholesale business.

The defendant introduced another deed of a new partnership between the same parties and under the same terms and conditions executed on the 22nd of April, 1873 (Exhibit No. 3 of the defendant; record page 25), the said new partnership to do business for the term of two years, and one year more for the liquidation thereof, which term would expire on March 31, 1875.

Another deed was introduced, executed by the same parties on July 7th, 1875, wherein said parties had formed a partnership to exploit a foundry and blacksmith shop; that the term for which the partnership was constituted expired on the 31st of March, 1875; that the partnership as constituted in the former deed was to continue under the same conditions for a term of two years which would expire on the 1st of April, 1877; *that although the partnership would continue doing business until the expiration of that term, even in case of death of any of the members thereof, this should be understood without prejudice to any agreement which the surviving partners might make with the heirs of the deceased regarding the dissolution of the aforesaid partnership.* (Exhibit No. 4 of the defendant; record page 26).

The defendant introduced another deed executed upon the death of Doña Bernardina Franco, dated the 6th of May, 1876 (Exhibit No. 5 of the defendant; record p. 27) containing an account of the foundry, and the lot for the use thereof (record p. 28); on the last page thereof the total value of the foundry is fixed in the sum of $24,163.00, and the following named persons appear as creditors of the firm M. Rabainne, and the minor children Lopez; that is to

say, if that deed could be considered, it is shown thereby that the interested parties themselves consented to have their interests in the shop, as acquired by them in the deed of 1870, converted into mere credits against the firm Rabainne é Hijo; on page 28 of the record, which contains a copy of the deed, it is stated: *the following liquidation is made of the firm of M. Rabainne é Hijo*"; it appears on the same page that the said contracting parties made an adjudication among other things, of $11,731.09 in the value of the shop (lot, warehouse, etc.) in favor of the creditors mentioned on page 28, among whom the minor children Lopez, and Luisa, Josefa and Hortensia Rabainne appear; and on the same page 28, the interested parties made the following statements: "Distribution showing the interests belonging in each property to the three partners named Doña Bernardina, Doña Marcelina and Lopez, to wit: Doña Marcelina's interest in the foundry, $2,478.52; Doña Bernardina's, $9,681.25; and Jobo Lopez' $272.14; which envolves an adjudication of the capital of each partner, as shown by the following statement of the parties at the end of the said page 28: "The above shows the *adjudication of capital* made in favor of the deceased Doña Bernardina, etc."

It is to be observed that in that deed the parties agreed to liquidate, and therefore, dissolve the partnership existing between Doña Bernardina, Doña Marcelina and Jobo Lopez, using thereby the power conferred by the deed executed in the year 1875 (Exhibit No. 4 of the defendant; record p. 26), which is further shown by the fact that no other deed of partnership has been made after the execution of the deed of partition in the year 1876, from which date they continued possessing the property, as testified by the plaintiff, (rec. p. 46) as *owners in common*, under the management and administration of Jobo Lopez. The documents introduced by the defendant show that, by virtue of the deed made in 1876 (Exhibit No. 5 of the defendant; record p. 27 *Doña Marcelina* has an interest of $2,478.52 *in the total value of the property in question*, which was fixed at that time in

the sum of $24,163.00, besides her proportional share in the sum of $11,731.09 which were adjudicated in the value of the shop in favor of the creditors (exhibit No. 5 of the defendant; record p. 28), and in regard to this adjudication, it should be observed that the defendant has failed to prove that the same was accepted by *all* the creditors mentioned therein (the said exhibit).

The property in question was valued in the aforesaid deed of 1876 in the sum of $24,163.00, and the same was adjudicated as follows:

48'54%	in favor of the creditors (which adjudication, as stated before, covers the interests belonging to the minor Lopez, and to Luisa, Josefa and Hortensia Rabainne)	$11,731.09
40'06%	in favor of Doña Bernardina	9,681.25
10'25%	in favor of Doña Marcelina	2,478.52
1'15%	in favor of Jobo Lopez	272.14
100'00%	Total	$24,163.00

The co-ownership of Doña Bernardina in the property in question, which was valued at $9,681.25, was adjudicated as follows:

20%	to the heiress Josefa	$ 1,936.14
20%	to the heiress Hortensia	1,936.14
20%	to the heiress Ramona (or her representative her minor children Jacobo, Orfelia and Herminia Lopez)	1,936.14
20%	in favor of the said heiresses as legatees by virtue of the will of Doña Bernardina	1,936.69
100%	Total	$ 9,681.25

The interest belonging to the deceased Doña Josefa Rabainne, amounting to $2,420.31, as inheritance and bequest, in accordance with the above adjudication, was distributed by her in her will executed in the year 1874 in the proportion of an equal part of two thirds thereof for each of the following: Orfelia, Jacobo and Herminia Lopez, Luisa Rabainne and Hortensia and Bernardo Bocanegra, the said two thirds amounting to $1,613.54, and the interest belonging to each of the above named persons in the said amount, being as follows (Exhibit No. 13 of the plaintiff; record p. 20).

16'66%	to Orfelia	$ 268.92
16'66%	to Jacobo	268.92
16'67%	to Herminia	268.92
16'67%	to Luisa	268.92
16'67%	to Hortensia	268.93
16'67%	to Bernardo	268.93
100'00%	Total	$ 1,613.54

(The distribution of the remaining third thereof is shown by the will or exhibit No. 13 of the plaintiff; record p. 20).

Summary regarding the distribution made of the $24,163.00 which was the value given to the property in question in the year 1876:

48'54%	to the creditors	$11,731.00
10'25%	to Marcelina Rosaly	2,478.52
11'15%	to Jobo Lopez	272.14
10'02%	to Luisa	2.420.31
10'02	to Hortensia	2,420.31
10'02	to Ramona (or her 3 children	2,420.32
10'00	to Josefa	2,420.31
100'00%	Total	$24,163.00

As shown above, two thirds of the co-ownership belonging to Josefa was distributed by her in her will, made in the year 1874, by giving an equal part thereof to Orfelia, Jacobo and Herminia Lopez, Luisa Rabainne and Hortensia and Bernardo Bocanegra, the interest belonging to each having been already stated.

But, as will be shown hereafter, the said deed of 1876 (exhibit No. 5 of the defendant) should not be considered by this Honorable Court in the determination of the rights and interest belonging to the plaintiff in the property in question; said determination should be made in accordance with the deed executed in the year 1870 (record p. 7), referred to at the beginning of this brief, for the following reasons:

1.—Because the said deed of 1876 is based on the contracts of partnership executed prior to that date (Exhibit Nos. 2, 3 and 4 of the defendant; record pp. 23-26) and as the said partnerships constituted by Doña Bernardina, Doña Marcelina and Jobo Lopez had the character of general partnerships, as shown by the respective deeds, wherein no specification is made regarding its nature, the said profits or, as they are known, *general partnerships of profits.*

Sections 1676 of the old Civil Code and Section 1578 of the Rev. Civ. Cod., read as follows:

> Articles of general co-partnership executed without specifying its nature only constitutes a general partnership of profits.
>
> See also Law VII, tit. 10, Partida 5.

And it is well known that in general partnership of profits, the real property belonging *to each of the partners continues to be their private property, the usufruct only passing to the partnership.*

Section 1675 of the old Civil Code and Section 1577 of the Rev. Civil Code, read as follows:

> General partnerships of profits include all that the partners may acquire by their industry or work during the continuation of the partnership.
>
> Personal or real property which each of the partners may posses at the time of the celebration of the agreement shall continue to be their private property, the usufruct only passing to the partnership.
>
> See Law 4, tit. 10, Partida 5.

Therefore, the ownership (fee) of the property in question was never transmitted to the partnership.

2.—Because the contract of partnership is void, if real property, or only the usufruct thereof, is contributed to the partnership, if an inventory of said property is not made, signed by the parties, and is attached to the instrument.

Section 1668 of the old Civil Code and Section 1570 of the Rev. Civil Code, read as follows:

> Articles of co-partnership are void, if real property is contributed to the same, if an inventory of said property is not made, signed by the parties, and which must be attached to the instrument.

And in this case, the defendant who has intended to show the existence of that partnership, but has failed to do so, has not shown either the existence of such inventory, nor has he shown to have contracted with the firm M. Rabainne é Hijo, a partnership which according to the exhibits of the defendant, was composed of Doña Bernardina, Doña Marcelina and Jobo Lopez.

The defendant alleges that in the year 1880 he leased the property from a partnership composed of the persons signing the contract of lease, but aside from the fact that he has produced no evidence at all tending to show the existence of any partnership among Marcelina Rosaly, Hortensia Rabainne, Luisa Rabainne y Rosaly and the

minor children Lopez (instead of Jobo Lopez) who are the persons who signed the contract of lease made in 1880, it is a positive fact that all of the above persons signed in their own right, that is to say, they made a contract in their own name with Mr. Graham, and as a consequence thereof, their rights are governed by the principles regarding properties held in common.

Section 1669 of the old Civil Code and Section 1571 of the Rev. Civil Code, read as follows:

> Partnerships, the articles of which are kept secret among the partners, and in which each one of the latter may contract in his own name with third persons, shall have no judicial personality.
>
> This kind of partnership shall be governed by the provisions relating to property held in common.

It should be born in mind also that the essential point in this case is to determine the persons from whom the defendant bought the property, and we have shown that he bought the interests of several co-owners as heirs of their parents, but not their interests or shares in any partnership. (Exhibits Nos. 6, 7, 8, 9, 10, 11 and 12 of the plaintiff; record pages 12, 15, 16, 17, 19, 22).

3.—Because as the defendant has intended to establish the existence of said partnerships between Doña Bernardina, Doña Marcelina and Jobo Lopez, though failing so to do, he had the burden of proving all the essential requirements for their legal existence, and no evidence has been introduced by him to show that said deeds (Exhibits Nos. 2, 3, and 4 of the defendant; record pp. 23, 25, and 26), have been recorded in the Registry of the Capital of the Province, which at that time was established at the city of San Juan, P. R. and this was an essential requirement to be complied with by all persons desiring to form a commercial partnership, and without the compliance of which the partnership deed could not give rise to

any action between the contracting parties to demand whatever rights may have been secured therein in their favor.

Sections 22, 25 and 28 of the old Code of Commerce, read as follows:

> Sec. 22.—A general and public commercial registry shall be opened in each Capital of Province, which shall be devided into two sections. The first section shall contain a general enrollment of merchants, covering all entries made in favor of persons devoting themselves to trade, in accordance with the provisions of Sec. 11. There shall be entered in the second section in chronological and numerical order, the following—
>
> The articles constituting a commercial partnership, whatever may be its object or appellation.
>
> Sec. 25.—It shall be the duty of every merchant to present for registration in the general registry of the province, the instruments mentioned in Sec. 22.
>
> With regard to partnership deeds, a certified copy thereof issued by the Clerk who authorized the same and containing all the circumstances provided for in Sec. 290, will be sufficient for this purpose.
>
> Sec. 28.—Partnership deeds not recorded in the general commercial registry shall not give rise to any action between the contracting parties to demand whatever rights may have been secured therein in their favor, but they shall produce proper effects in favor of third persons who may have contracted with the partnership.
>
> See Escriche's Law Dictionary p. 1695.

And although the partnership was a valid one, without the compliance with such a requirement, when rights of third persons contracting with the same were involved, however, the defendant in

this case, as heretofore shown, made no contract with the partnership existing between Doña Bernardina, Doña Marcelina and Jobo Lopez, nor with any other partnership, nor did he contract with any partnership when he bought the interests or portions in the property heretofore mentioned, which is the most vital point involved in this case.

For the foregoing reasons we submit that the defendant cannot invoke the existence of a partnership in this case, nor interfere in any manner whatsoever with the business thereof.

BRIEF CONSIDERATIONS REGARDING PARTNERSHIPS.

INVOLVING ASSIGNMENT OF ERROR

Nos. 3, 4, 5, 6, 7, 8, 9, 10, 12, 17, 20, 22, 23, 25, 28, and 29.

The defendant tried to prove that the said partnership existed after the year 1876, but even admitting that it did so exist, it is evidently shown by the deed of 1876 (record p. 28) and by the contract of lease made in 1880 (record p. 9) that the foundry (buildings, lot, and utensils) did not belong already to the partnership, that the same had been adjudicated to, and distributed among, the former partners, and *that they leased and disposed to the same in their own right.*

The partnerships existing prior to 1876 were merely partnerships of profits, and therefore the title of each partner did not pass to the partnerships, which is shown by the fact that on making the liquidation and partition of the property left by Doña Bernardina Franco, the interest belonging to her was determined as an interest on the property, and not as an interest in the partnership property of M. Rabainne é Hijo, because if her interest had been determined as an interest or share in the partnership, then such an interest or share in the said partnership should have been the subject of valuation and partition among her heirs, and not the interest on the property which was what they distributed (record p. 27).

Section 1182 of the Rev. Civil Code, reads: "Proof of obligations devolves upon the persons claiming their fulfillment, and that of their extinction upon those opposing it." And then we ask: Is it possible for the defendant to successfully sustain that Doña Marcelina Rosaly has not plainly and clearly proven, in such a manner as to leave no room for doubt, that she is a co-owner of the building in question and appurtenances thereto, and that a cautionary notice has been properly taken in the Registry of Property regarding her title? And it is well known that for the purposes of the Mortgage Law a cautionary notice regarding a title has the same effect as the record of the title itself, although only during four months allowed by Law for the same to remain in force.

On the other hand, has the defendant proven the extinction of that obligation created in favor of the plaintiff by virtue of her titles?

How and by what means did he try to show it?... In the first place, by information from Messrs Francisco Parra and Jobo Lopez who told Mr. Graham that Doña Marcelina had no interest whatever in the alleged partnership of Successors to M. Rabainne é Hijo (record p. 49), because she had a debt pending in favor of the partnership; and also by the fact that Jobo Lopez gave the defendant a list of the names of the persons who, according to his own views, had a right to receive the rents of the lease made in 1880, (record p. 48) and the name of Doña Marcelina was not included in said list. But may hearsay evidence like the mere statements of Messrs. Francisco Parra and Jobo Lopez prejudice in any manner whatsoever the rights of Doña Marcelina Rosaly who were acquired by virtue of public instruments? Why is it that the defendant did not submit to the consideration of the lower court a more convincing and efficient proof on this point than the mere statements of Mr. Dorrington (record p. 32) who positively averred with an astonishing nerve, as did the defendant, (record p. 49) "that Doña Marcelina had no interest in the partnership because he lightly examined

the account of said Lady and found nothing credited to her favor." Is it possible, Honorable Justices, that Mr. Dorrington by lightly examining the acount of Doña Marcelina should have been able to find as a positive fact that she had no interest in the said partnership,, in case the same should have ever existed, when the witness Mr. Pasarell (record p. 54) testified that at least two months were necessary to make an examination of said account?

But accepting for the sake of argument that a partnership existed among those who signed the contract of lease in 1880, which of course has not been proven, then we sustain that the term of said partnership *expired* and that the same was *liquidated*: *first*, because it has been so admitted by the defendant in the second clause of the deed of lease, by using the words "balance of the liquidation . . ."; *second*, because he did so testify under oath in the Federal Court (record p. 11); and *third*, because on account of that lease made to the defendant, the enterprise, that is to say, the exploitation of the foundry business, ceased, which business was the object of the alleged constitution of the partnership, and this is one of the manners provided for the dissolution of partnerships.

Section 329, No. 1, of the old Code of Commerce, reads as follows:

> Mercantile partnerships shall be completely dissolved for the following reasons:
>
> The termination of the period fixed in the articles of partnership, or the conclusion of the enterprise which constitutes its purpose.

Section 221, No. 1, of the Code of Commerce now in force reads as follows:

> Associations of any kind whatsoever shall be completely dissolved for the following reasons:
>
> The termination of the period fixed in the articles of association or the conclusion of the enterprise which constitutes its purpose.

Associations shall not be considered as extended by the implied or presumed will of the members thereof after the period for which they were constituted has elapsed; the execution of a new deed is necessary.

Section 331 of the old Code of Commerce reads as follows:

> Commercial Associations shall not be considered as extended by the presumed will of the members after the period for which they were constituted has elapsed; and if the members desire to continue in association, they shall draw up new articles subject to all the formalities prescribed for their establishment.

Section 223 of the Code of Commerce now in force provides:

> Commercial Associations shall not be considered as extended by the implied or presumed will of the members after the period for which they were constituted has elapsed and if the members desire to continue in association they shall draw up new articles, subject to all the formalities prescribed for their establishment, according to the provisions of Article 119.

Once a partnership is dissolved, those who were members thereof have capacity to transmit their respective rights therein. Dec. of the Board of Registrars, April 24, 1890.

And now we ask: Why is it that the defendant did not buy the interests of the members of the partnership, but the undivided interests of some of the co-owners who acquired them as heirs of Don Mateo Rabainne, Doña Bernardina Franco, etc? Because such partnership did not exist among those who signed the lease of 1880, but only a mere community of property subject to the administration of Jobo Lopez.

And even admitting that the interest of the plaintiff in the

property in question, when the same was leased to the defendant in 1880, has not been clearly shown or determined, it must be presumed that all the co-owners had an equal interest.

Section 393 of the old Civil Code and Section 400 of the Rev. Civ. Code, read as follows:

> The share of the participants in the benefits, as well as in the charges, shall be in proportion to their respective interests.
>
> The interests belonging to the co-owners shall be presumed equal, until the contrary is proven.

Jobo Lopez, after the year 1876, had no other character than that of a mere manager of a community of property; otherwise, how could it be explained that having been a member of the partnership in in 1875 (Exhibit No. 4 of the defandant; record p. 26), he did not sign the contract of lease in 1880 in his own right, but as guardian of his minor children Jacobo, Orfelia and Herminia, who were Graham's Vendors? Why is it that the defendant did not buy any interest from Jobo Lopez? Because the defendant considered as owners of that property only those who signed the said contract of lease in their own right, and though the plaintiff did so sign the said contract, the defendant never purchased her interest therein.

> After a partnership has been dissolved, the members thereof have legal capacity to transmit their respective rights therein, without previously making the liquidation and adjudication of the partnership property, as there is no legal provision requiring such a previous liquidation, and the adjudication of the property by the partnership to each member would be still unnecessary if all the partners give their consent to the transmission of any member's rights (Dec. of April 24, 1890).

If a partnership has not *the character of a mercantile part-*

nership, the death of any of the members thereof causes a dissolution of the partnership, according to the provisions of the Law 10, tit. 10, Partida 5, unless there was an agreement to the effect that the partnership should continue between the surviving members of the same. The dissolution of a civil, not a mercantile, partnership, brings about the extinction of the juridical person, and the cessation of all the powers conferred on the partners by virtue of the contract of partnership, and the surviving members as well as the heirs of the deceased, have the character, as far as the partnership property is concerned, of true co-proprietors or co-owners of said property, constituting a true community of property. In accordance with these principles the manager of a dissolved partnership has no legal capacity to execute a deed of mortgage or sale of property belonging to the partnership. (Dec. of August 30, 1892).

BOOKS OF M. RABAINNE E HIJO.

The defendant also sustained in the lower court that the loss of the books of M. Rabainne é Hijo was imputable to the plaintiff and appellant herein, when it is a fact, as testified to by the witness Pasarell (record p. 53) that he (Pasarell) delivered the said books to Bocanegra who was to produce the same in the Federal Court in the suit pending in said Court against the defendant Graham; and the witness Mr. Miller testified that Bocanegra did produce the books in the Court and that he was sure that he (the witness) *did not return the aforesaid books to the plaintiff,* but to a man (record p. 54).

Theerfore, this Honorable Court may easily infer that the said books having been produced in the Federal Court against Mr. Graham, and having been returned by the Master in Chancery Mr. Miller *to a man,* as shown by his testimony (who took them pro-

bably for the purpose of avoiding their further production in Court), it is evidently proven that it was not Doña Marcelina who removed the books from the Master's Office, but *a man* who was interested in hiding the same.

SALES MADE BY JOBO LOPEZ AFTER THE YEAR 1876.

Any sale made by Jobo Lopez after the year 1876, as a member of a partnership then not existing, would involve an assumption of powers lacked by him, and if he signed a deed of sale, as a member of that alleged partnership, in favor of Don Francisco Parra, (record p. 27) after the year 1880, why is it that he did not sign also in his own right the contract of lease made in favor of the defendant in the year 1880? (Record p. 9).

Why is it that the defendant and Messrs. Parra and Battistini did not buy the interests in the property from the partnership then existing, according to their views, but acquired the said interests from the several co-owners who inherited the same from their parents? (See exhibits Nos. 7, 8, 9, 10, 11 and 12; record pp. 15, 16, 17, 19 and 20).

Simply because the defendant as well as said gentlemen knew and believed that the only owners of the property in question were the persons who signed in their own right the contract of lease of 1880, and though the plaintiff Doña Marcelina Rosaly was one of them, the defendant Graham never bought her interest therein.

PARTITION OF PROPERTY MADE IN THE YEAR 1870.

INVOLVING ERROR No. 27.

On making the partition of the property left by Don Mateo and Don Luis Rabainne in the year 1870, which is the instrument to be considered in the decision of this case, as shown above, the property in question was given a value of $27,443.67, and the same was adjudicated as follows:

23'06%	to the widow Bernardina	$ 6,329.00
6'21%	to Luisa as inheritance of Don Mateo	1,703.50
6'21%	to Ramona (or her representative Jacobo, Ofelia y Herminia)	1,703.50
15'16%	to Josefa	4,132.00
15'16%	to Hortensia	4,132.00
22'78%	to Marcelina Rosaly (from her husband Luis)	6,253.67
11'42%	to Luisa (as inheritance of her father Luis)	3,190 00
100'00%	Total	$27,443.67

The adjudication of $6,329.00 made in favor of the widow Doña Bernardina Franco, in the property in question, should have been distributed as follows:

20%	to Josefa	$ 1,265.80
20%	to Hortensia	1,265.80
20%	to Luisa (as representative of her father Luis)	1,265.80
20%	to Ramona (or her representative her children Jacobo, Orfelia and Herminia	1,265.80
20%	to the same persons as legatees	1,265.80
100%	Total	$ 6,329.00

The adjudication made in favor of the deceased Doña Josefa Rabainne as heiress and legatee, amounting to $5,714.25, was distributed by her in her will executed in the year 1874 (Exhibit No. 13 of the plaintiff) in the proportion of an equal part of two thirds thereof in favor of each of the following persons: Ofelia, Jacobo and Herminia Lopez, Luisa Rabainne and Hortensia and Bernardo

Bocanegra, the said two thirds amounting to $3,809.50, which divided among the legatees, their respective shares should be the following:

16'66%	to Ofelia	$ 634.91
16'66%	to Jacobo	634.91
16'67%	to Herminia	634.92
16'67	to Luisa	634.92
16'67	to Hortensia	634.92
16'67	to Bernardo	634.92
100%	Total	$ 3,809.50

Summary of the distribution made of the sum of $27,443.67, which was the value given to the property in question in the year 1870, which is the value to be considered to determine plaintiff's rights:

22'78	to Doña Marcelina Rosaly	$ 6,253.67
23'60	to Luisa (as inheritance and bequest)	6,475.75
11'96	to Ramona (or her children Jacobo, Orfelia and Herminia, as inheritance and bequest)	3,825.75
20'83	to Hortensia (as inheritance and bequest, which after the year 1880 passed to her children the minor Bocanegra	5,714.25
20'83	to Josefa (as inheritance and bequest)	5,714.25
100%	Total	$27,443.67

As shown by the above statement, the interest of Doña Josefa was disposed of by her in her will, in the year 1874, and distributed in the proportion of an equal part of two thirds in favor of Ofelia, Jacobo and Herminia Lopez, Luisa Rabainne and Hortensia and

Bernardo Bocanegra, the interest belonging to each legatee beingi adjudicated therein.

The exhibit No. 7 of the defendant (record p. 29) which is a will made by the plaintiff in the year 1890 does not prejudice her rights in any manner whatsoever, as the fourth clause thereof was explained by her during her testimony at the trial of this case (record p. 46); but, on the other hand, the said instrument lacks any value, inasmuch as it is a will and as such has no effect whatever until after the death of the testator. Dec. of April 7, 1903.

SUPPOSED STATEMENTS MADE BY THE PLAINTIFF TO MRS. GRAHAM.

As to the alleged statements made by Doña Marcelina Rosaly to Mrs. Graham to the effect that the former had no interest in the property in question, we respectfully invite this Hon. Court to examine the plaintiff's testimony on page 56 of the record, showing *"that she never had any conversation with Mrs. Graham regarding the building and lot claimed by her from the defendant"*. Besides, it is difficult to believe that the plaintiff expressly called on Mrs. Graham, just to tell her: "Madame, I have no interest in that building etc."

On the other hand, even admitting that the plaintiff made the statement that she had no interest in the property, *this does not necessarily involve that she really had no interest,* as she might have been ignorant of her rights by being ignorant of the law and might have known that she did have some rights upon hearing the opinion of her counsel.

We also desire to call the attention of this Honorable Court to the testimony of the defendant (record p. 47) and to that of the witness Pasarell (record p. 53).

In conclusion, therefore, it is respectfully urged that the decree

and decision of the Supreme Court of P. R. be reversed and set aside.

Respectfully submitted,

JACINTO TEXIDOR,

Attorney for appellant.

Office Supreme Court, U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 64.

MARCELINA ROSALY, WIDOW OF RABAINNE,
APPELLANT,

vs.

ROBERTO GRAHAM Y. FRAZER, APPELLEE.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

BRIEF AND ARGUMENT OF APPELLEE.

CHARLES HARTZELL,
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Attorneys for Appellee.

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BRIEF AND ARGUMENT OF APPELLEE.

The statement of facts as set forth in the brief and argument filed by appellant herein is so incomplete that in order to properly bring to the attention of the court the real issues passed upon by the Supreme Court of Porto Rico in this cause, it is necessary to refer to certain undisputed facts which are disclosed by the record.

The appellant inherited from her husband, upon his death, as a portion of the assets of his estate, an interest in a copartnership of which he was a member, and the assets of said copartnerhip included the ownership of the property in controversy herein. A liquidation of the assets of the said copartnership disclosed that the interest of her said husband in the property in controversy had a valuation estimated at the sum of $6,253.67. This liquidation is set forth at folios 15 and 16 of the transcript of the record, where the various interests in the property in controversy are set forth in detail.

On February 8, 1870, appellant, together with two other persons, entered into a copartnership agreement for the purpose of carrying on the business of blacksmithing, carpentry, and other branches of industrial industry, the said agreement being set forth at folios 47, 48, and 49 of the transcript of the record, and it appears from the same that the agreement in question constituted a continuation of the firm and the business in which her husband had been a partner prior to his death, and the agreement expressly provides that the appellant brings to the partnership the capital which was assigned to her in the property in controversy upon the death of her husband, and that she contributed the same to the capital of the said copartnership, a portion of said deed of copartnership reading as follows:

> "That according to the second clause Dona Bernar-
> "dina Franco states that she brought into the part-
> "nership the capital which was assigned to her upon
> "the death of her husband, Mateo Rabainne, in the
> "deed of partition executed on the twenty-eighth of
> "January, 1870, before the notary public authoriz-
> "ing this deed, which capital was represented by that
> "which was adjudicated to her in the blacksmithing
> "shop, referred to, the factory, merchandise, ma-
> "chinery, accounts, obligations and other depend-
> "encies thereto, and that Dona Marcelina Rosaly
> "contributed to the same the capital which was ad-
> "judicated to her upon the death of her husband,
> "Don Luis Rabainne, in the said blacksmith shop
> "and other dependencies as shown by the deed of
> "partition referred to, which contributions of prop-
> "erties are specified more minutely in the accounts
> "of capital which have respectively been opened in
> "regard to each one in the new books of the firm."

The life of this copartnership was extended several times, as shown by deeds of extension executed on April 22, 1873, and July 7, 1875, and set forth in folios 50 and 53 of the transcript of the record.

On August 15, 1880, the said copartnership executed to appellee a lease to the property in controversy, in which

plaintiff's interests had been so contributed to the capital of said firm.

While this lease appears to have been signed by the individual partners, the instrument clearly purports to be the act of the partnership. This lease is set forth in folios 18 to 20 of the transcript of the record, and we copy the following therefrom: "At the city of Ponce, this fifteenth day of August, in the year one thousand eight hundred and eighty. We, the undersigned, on the one side 'The Succession of Rabainne e Hijo,' an industrial partnership of this city, composed of the following persons," etc., and here follows the names of the individual partners and the description and terms of the instrument.

This is the end of the record so far as the history of the copartnership is concerned, and as was said in the opinion of the justice of the Supreme Court of Porto Rico who passed upon the case, "No evidence has been introduced tending to show that the same (the copartnership) has been duly and finally liquidated."

The Supreme Court of Porto Rico further says at folios 133 and 134 of the transcript of the record:

> "But the evidence shows that, although the above "is true, the plaintiff (appellant) contributed all the "capital adjudicated to her, to the partnership which "under the firm M. Rabainne e Hijos was con- "stituted by her together with Dona Bernardina "Franco, widow of Rabainne, and Don Jobo Lopez, "by a public deed executed on the 8th of February, "1870. Such partnership which was to be engaged "in the same line of business followed by the extin- "guished partnership of M. Rabainne e Hijo, con- "stituted by Don Mateo and Don Luis, was ex- "tended by public deeds executed on the 22d of "April, 1873, and the 7th of July, 1875, and no "evidence has been introduced tending to show that "the same has been duly and finally liquidated, there "being several circumstances showing that said part- "nership continued, although, perhaps in an irregu- "lar manner, for several years longer."

"The plaintiff claims as owner of a certain co-
"ownership, and the evidence shows that she con-
"tributed said co-ownership to a mercantile partner-
"ship, to the fate of which said co-ownership was
"subject from that time. And the evidence, shows
"further that a balance of said partnership having
"been made on the 30th of November, 1875, it ap-
"peared that the contribution of the plaintiff was
"reduced to $2,478.52, such as is shown by the deed
"containing the partition proceedings of the proper-
"ties left at the death of Dona Bernardina Franco,
"widow of Rabainne, executed before a notary pub-
"lic, on the 6th of May, 1876, by the plaintiff her-
"self and other persons, and that there are circum-
"stances showing that years afterwards the plaintiff
"was debtor of the partnership, as shown apparently
"by the books of the latter."

"Such being the case, it follows that the first
"fact, which is the fundamental fact of the com-
"plaint filed in this case, has not been proven, and,
"consequently, that the judgment rendered by the
"district court, is just and proper."

This cause was fully determined by both the District Court of Ponce and the Supreme Court of Porto Rico upon the single issue that the plaintiff-appellant had wholly failed to prove any title in herself to the property in question.

Her last act with respect to her alleged interest in the property for which she is now contending was to contribute the same as her subscription to the capital stock of a co-partnership, which said firm subsequently leased the property, and any action affecting the same thereafter must necessarily have been the action of the copartnership, which is not shown to have ever been liquidated or dissolved.

But furthermore there is some showing in the record as to the fortunes, or rather the misfortunes, of the said firm.

On May 6, 1876, a partition of properties of the original partners of the firm was made, and as is said in folio 56 of the transcript of the record, at that time, according to the

books of the firm, the interest of the plaintiff only represented an investment of 2,478.52/100 pesos and the witness, Alfredo Dorrington, at folio 66 of the transcript of the record, testifies that in 1880 Jobo Lopez, the managing partner of the firm, told him that appellant had taken from the partnership more than actually belonged to her. That the said witness saw the account of appellant as contained in the books of the said firm and that the said account showed that she had taken more money from the said firm than belonged to her. Also at folio 97 of the transcript of the record, appellee, as a witness in his own behalf, testifies that he saw the books of the said firm before purchasing the property in question, and that he saw the account of appellant, and that she owed a certain amount to the firm instead of having any credit therein.

Further, that in 1890 appellant executed a will in which she stated as follows: "The properties now belonging to testatrix appear in the books of the extinguished partnership of M. Rabainne e Hijo." Appellant's daughter had also been the owner of an interest in the property in question inherited from her father, and it appears that during the lease to appellee, appellant was accustomed to collect and receipt for the proportion of rental coming to her said daughter. Copies of receipts executed by her in this behalf are set forth at folio 60½ of the transcript of the record, and the testimony shows that appellant in the collection of said rents never made any claim for rentals coming to herself. See Transcript of Record, folio 69 and folio 97.

Defendant in error acquired title to the property in question by deeds of the various members of the copartnership who appeared to have any interest in the assets in the firm, as related by him in his testimony at folios 96 and 97 of the transcript of the record, and in May, 1902, the title of appellee to the property was duly registered in the registry of property as of the full ownership of appellee as shown at transcript of the record, folio 28.

In 1908 for the first time appellant asserts a claim to an interest in the property by the institution of this action. Her last prior act in relation to same as an individual was the execution of the deed of partnership of February, 1870, and her signature as a member of the firm to the lease to appellee in 1880.

The District Court of Ponce, in the decision of the cause as set forth at folio 10 of the transcript of the record, well said: "This court does not look at old claims with favor, especially when the plaintiff's delay in bringing the action is not explained."

While it is true that the opinion of the Supreme Court of Porto Rico does discuss and pass upon various other points raised by the appeal (see Transcript, folios 134 to 138), still that court as well as the District Court of Ponce, bases its decision of the cause upon the total failure of appellant to show any title in herself to the property sued for, and the Supreme Court says at folio 134 of the Transcript:

> "Such being the case, it follows that the first fact, "which is the fundamental fact of the complaint "filed in this case, has not been proven, and, con- "sequently, that the judgment rendered by the Dis- "trict Court is just and proper."
>
> "If the plaintiff has still any right upon the prop- "erty claimed by her, such a right must be shown "by a final liquidation of the partnership, and such "final liquidation was not either alleged or proven "at the trial."
>
> "This point having been settled, it is unnecessary "to consider the questions so ably raised by the "learned counsel for the plaintiff with regard to the "title of the defendant. But we should, and will, "consider their 'exceptions' saved in a 'bill' which, "properly settled and certified to, has been filed in "this Supreme Court for the purpose of this appeal. "Said exceptions reach the number of 29, but they "can be discussed in seven groups."

We have carefully examined the ably prepared brief filed for appellant in this cause, but the same consists of an elaborate discussion of technical points relating principally to the admission and rejection of testimony which could not in any way affect the determination of the only real point of controversy in the cause (to wit, the title of appellant), and it should be borne in mind that under the practice in Porto Rico, there being no jury in civil causes and the judge sitting as a chancellor, the court is in a position to accept such testimony as may carry force or conviction to the mind or conscience of the chancellor.

But the Supreme Court of Porto Rico, having fully sustained the rulings of the District Court of Ponce in every respect, we are content to rest these matters upon the strength of that decision.

In conclusion, we feel justified in calling the attention of the court to the manner in which the transcript of record for this appeal has been formulated.

The law authorizing appeals and writs of error from the Supreme Court of Porto Rico provides that the same shall be taken in the same manner as appeals and writs of error from territorial Supreme Courts, and the law regulating the taking of such appeals or writs of error from such territorial Supreme Courts provides that the court from which such appeal or writ of error is taken shall prepare a statement of facts in the nature of a special verdict, to be included in the transcript of the record, and this is the only statement of the facts of the case which may appear in such transcript for the consideration of such appeal or writ of error.

In this cause a somewhat startling and certainly a novel form of procedure has been adopted to perfect the transcript of the record.

It appears that upon the appeal taken from the District Court of Ponce to the Supreme Court of Porto Rico an elaborate bill of exceptions was prepared which contained all of the testimony offered on the original trial of the cause.

This is certified to by the acting judge of the District Court of Ponce (see Transcript, folio 127), and this bill of exceptions has been brought into the transcript for this appeal, in lieu of the statement of the facts in the nature of a special verdict as required by the statute.

The assignment of errors filed in this court and the assignment of errors filed in the Supreme Court of Porto Rico are practically identical, although it is alleged in one case that the District Court erred and in the other case that the Supreme Court erred.

The order of the Supreme Court of Porto Rico authorizing the substitution of this bill of exceptions in lieu of the statement of facts in form of a special verdict, is found at folio 160 of the transcript of the record, and the procedure prescribed by such order of the Supreme Court of Porto Rico would certainly very much simplify the method as provided by the act of Congress for presenting appeals and writs of error from territorial courts to this tribunal, but we venture to doubt whether this court will be willing to sanction the practice so adopted, whereby entire bills of exceptions from trial courts should be bodily included in transcripts of record to this court, leaving it for this court to determine, what facts were accepted and used by the territorial court as the basis for its determination.

In this case the District Court of Ponce and the Supreme Court of Porto Rico having both agreed upon the basic proposition that the appellant had wholly failed to show title to the disputed premises, it might be well that all of the testimony should be presented in order to permit of an examination of same to show as to the correctness of that conclusion, but we submit that such procedure is wholly unauthorized and that the record as presented does not comply with the requirements of the law in that behalf.

Respectfully submitted,

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